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The United State Government Versus John Harrison Surratt: A Study in Attitudes

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**THE UNITED STATES GOVERNMENT VERSUS
JOHN HARRISON SURRETT: A STUDY IN ATTITUDES**

by

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ABSTRACT

THE UNITED STATES GOVERNMENT VERSUS JOHN HARRISON SURRETT: A STUDY IN ATTITUDES

Thomas Michael Martin
Old Dominion University, 1996
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The same day on which accused Abraham Lincoln murder conspirator Mary Eugenia Surratt was arrested at her Washington, D.C. boardinghouse, her son and alleged co-conspirator, John Harrison Surratt, was in a small town in northern New York. The arrest of the widow Surratt, however, marks the first of a series of points of departure between the destinies of the mother and the son. She was destined to follow a path from arrest to trial and execution by means of a military commission created by the War Department. John's circuitous route from trans-Atlantic flight to extradition, trial, and dismissal by a civilian court over two years after the original conspirators' trial could hardly have contrasted more with his mother's lot. The delineation between their two legal dramas is clearly the 1866 *ex parte Milligan* decision by the Supreme Court which detoured John Surratt's trial away from the military venue that his mother had experienced. That case, questioning the jurisdiction of military commissions may account, in part, for the son's eventual release. It does not, however, explain the United States government's *laissez faire* attitude toward young Surratt during his time as a fugitive. This study, using documents ranging from State Department dispatches to published trial transcripts and unpublished court papers, demonstrates that

certain executive branch officials engineered a strategy to indefinitely maintain John Surratt's fugitive status. When this plan failed, it conversely became in the best interests of the United States government to convict him and measures were taken to insure that end.

To Charlotte K. Martin, the repository and steward of our family's history,
and John J. Martin, who assimilated history through chapters of his own design.

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CHAPTER I

INTRODUCTION

Neither John Harrison Surratt nor any of the six others in attendance knew that this was to be the first and only time that they all would ever meet as a group. At actor John Wilkes Booth's urging they gathered at Gautier's Restaurant in Washington D.C. on the evening of 17 March 1865 to discuss strategy, tactics, and objectives.¹ Overcoming the suspicion, paranoia, and doubt stemming from their aborted plot of 17 January to abduct President Lincoln from Ford's Theatre--after which in one writer's unflattering estimation "they scattered like minnows"--the group of conspirators was only now, two months later, prepared to again listen to and comment on plans for another attempt to kidnap the president.²

By nearly every assessment, Booth was the driving force behind these conspiracies.³ One must wonder what thoughts ran through his mind as he

¹ Jim Bishop, The Day Lincoln Was Shot (New York: Harper & Brothers, Publishers, 1955), 84-86. Not present but later accused of complicity were Dr. Samuel Mudd, the Maryland surgeon who later set the leg that Booth injured during the assassination, Edward Spangler, a Ford's Theatre stagehand among the apparent legion of sycophantic admirers in Booth's entourage, and Mary Eugenia Surratt, John Surratt's mother and the owner-proprietor of a Washington boardinghouse that served as the unofficial headquarters of the conspiracy.

² Bishop, The Day Lincoln Was Shot, 77.

³ See Vaughn Shelton's Mask for Treason: The Lincoln Murder Trial (Harrisburg, PA: Stackpole Books, 1965) for a unique view in which Washington detective Lafayette Baker, rather than Booth, is portrayed as the mastermind of the assassination and in which John Surratt is portrayed as a double agent serving both Baker and the Confederate government.

addressed this eclectic gathering of longtime friends, hand-picked associates and several specialists enlisted by key members of the group. Collectively, Confederate courier John Harrison Surratt, ex-partisan-ranger Lewis Paine, boatman George Atzerodt, former drugstore delivery boy David Herold, produce and grain store employee Michael O'Laughlin, and store clerk Sam Arnold may have demonstrated all that Booth ever expected of his fellow conspirators. By no means a collection of professionals, Booth's cabal was, by one historian's assessment "a loose, informally organized group, tied together only by devotion to the Confederate cause, personal attachment to Booth, and the considerable amount of money that the actor paid to house and feed his team in Washington."⁴ Lafayette Baker, the chief of Washington's semi-autonomous National Detectives, who later remarked that "Booth found that tragedy in real life could no more be enacted without greasy-faced and knock-kneed supernumeraries than upon the mimic stage," was even less flattering.⁵ Such company should have sickened Booth, but to Baker he had "become, by resolve, a cut throat himself."⁶ Booth, who to some degree viewed his actions as patriotic necessity, would have taken

⁴ David Herbert Donald, Lincoln (New York: Simon & Schuster, 1995), 587. Whether or not Donald intentionally prioritized these factors, one Booth biographer reverses their order, and, designates the conspiracy members--with the exception of John Surratt--as undisguised mercenaries. See Francis Wilson, John Wilkes Booth: Fact and Fiction of Lincoln's Assassination (Boston and New York: Houghton Mifflin Company, 1929), 26-27.

⁵ Lafayette Charles Baker, Spies, Traitors and Conspirators of the Late Civil War (Philadelphia: J.E. Potter & Company, 1894), 295.

⁶ Baker, Conspirators, 296.

exception to such an inclusive and derogatory generalization.⁷

The exact placement of conspirators John Harrison Surratt and his mother Mary Eugenia Surratt on a continuum of culpability was--and remains--a matter of speculation. The designation "cut-throat," while arguably fitting for the rank and file member of the conspiracy, seems inappropriate for both John Surratt and his mother. As owner of the Washington boardinghouse frequented by practically every member of the conspiracy, Mary Surratt is, nevertheless, presently and innocuously characterized--with minor variations--as someone whose failings fall somewhere between William C. Davis's "the aging woman whose crime had been in renting rooms to conspirators" and Jim Bishop's "a pious zero with a penchant for falling on evil days."⁸ Unfortunately for widow Surratt, she was not regarded so innocently in 1865.

Mary Surratt's son John, however, is not so easily written off as a second tier or serendipitous participant. The bits of circumstantial evidence surrounding his participation seem to fit effortlessly into several different scenarios--disenchanted, erstwhile member of the conspiracy, part-time topographic

⁷ Bishop, The Day Lincoln Was Shot, 65. Bishop also includes the desire for personal fame and the consequent denigration of Lincoln -- a man Booth despised for his political convictions and his role as Commander-in-Chief of the arrogant empire to the North -- as motives for Booth's actions. See also Carl Sandburg, Abraham Lincoln: The War Years (New York: Harcourt, Brace & World, Inc., 1939), 4: 319-321 for the full text of a soul baring and quite maudlin letter written by Booth to his sister Asia some time in 1864 and closed tellingly with the phrase "A Confederate doing duty upon his own responsibility."

⁸ Burke Davis, The Long Surrender (New York: Random House, 1985), 86 and Bishop, The Day Lincoln Was Shot, 64. See also Donald, Lincoln for a similar opinion of Mary Surratt.

consultant, recruiting officer for Booth, liaison between Booth and the Confederate hierarchy in Richmond, active participant exclusively in the abduction plots, and principal in the Ford's Theatre assassination of President Abraham Lincoln. There is evidence suggesting each and all of these characterizations. Of Surratt's contemporaries, only Lafayette Baker, oddly enough, with a wealth of manpower and, eventually, evidence at his disposal, relegated John Surratt merely to the relatively minor role of accessory before the fact. Reminiscing on the then developing situation, Baker later remarked, "[young] Surratt does not seem to have been a puissant spirit in the scheme. [Booth] was the head and heart of the plot; Mrs. Surratt was his anchor, and the rest of the boys were disciples to Iscariot and Jezebel. . . . John Surratt knew of the murder and connived at it."⁹

Vaughn Shelton, by comparison, attributes to John Surratt a central and authoritative role in the abduction plots. He sees him as "the catalyst of Booth's kidnap scheme" who acted as a "lantern to which . . . other conspirators, like fireflies, were irresistibly drawn."¹⁰ Other historians as well have viewed John Surratt as an addition, albeit a reluctant one, to the abduction plot, who was eventually drawn in by "Booth's personal magnetism," by the "brazenness of the idea [of abducting the president]" that appealed to his partisan spirit, and by his perceived "legality of the act."¹¹ Surratt himself would habitually trot out this

⁹ Baker, Conspirators, 299.

¹⁰ Shelton, Mask, 224.

¹¹ Wilson, John Wilkes Booth, 44 and Bishop, The Day Lincoln Was Shot, 73.

veneer of patriotism as justification for his actions. Years later, in fact, he turned the tables on a capacity audience in a Maryland assembly hall, and inquired of them "Who among you would not have volunteered to abduct [Jefferson] Davis?"¹² Surratt, like Booth, made no apologies for what he perceived to be acts of honor and national necessity.

The Surratts were both eventually apprehended, she in April 1865 in Washington, D.C., and he over a year and a half later in Alexandria, Egypt. Their divergent fates following their arrests were determined in large part by the attitudes of certain key officials of the United States government. These officials would initially determine which of the two Surratts was the greater prize and devise a plan to bring that person to justice. When that scheme failed, they and their designees--a military commission sanctioned by the Secretary of Defense--continued with the trial and eventual execution of the one in custody. These same officials would determine as well that the surviving Surratt--still a fugitive--had the potential, due to their perception of his intimacy with the Booth cabal, to retroactively raise questions regarding the verdict, if not the constitutional foundation for the 1865 military tribunal. In order to avoid that scenario, the subsequent strategy of these officials led them to disregard, downplay, and delay the response to dispatches from overseas consuls who periodically brought to their attention the whereabouts and intentions of the fugitive Surratt. The actions of

¹² Anon., "A Remarkable Lecture--John Surratt Tells His Story," Lincoln Herald 51 (December 1949): 25. Interestingly, Surratt states that the motive behind this 30 December 1870 lecture to a Rockville, Maryland paying audience was not "self-justification," nor "self-glorification," but merely "pecuniary necessity."

these officials were overt enough, in fact, to warrant a subsequent investigation by the House Judiciary Committee. When consular enthusiasm overwhelmed executive branch obstruction and John Surratt was arrested and extradited, the attitude of the United States government underwent a drastic metamorphosis. With the alleged conspirator in custody, conviction now became a necessity in order to confirm the findings of the military commission that had convicted Mrs. Surratt.

The trial of John Surratt, in some respects a retrial of his mother, reflected the attitude that the United States government then adopted toward the son. Strategically defensive perhaps in its concern over the looming presence of the 1865 trial, the prosecution's aggressive tactics to secure a conviction, on the other hand, were strictly offensive in nature. Even the extreme lengths to which the government went, however, proved insufficient to convince a jury of John Surratt's guilt. When statutes of limitations eventually forced his release, the Surratt family's ordeal was finally over. Who in the United States government made these above determinations and the manner of and motives for the actions consequent to those determinations is the focus of this study.

CHAPTER II

THE SURREATTS AND THE 1865 MILITARY COMMISSION

The conspirators' meeting at Gautier's terminated somewhat less than amicably with plans having been set for a second abduction attempt. Scheduled for 20 March 1865, the conspirators planned to intercept the president's carriage as it made its way to the Soldier's Home where, according to Booth's sources, Mr. and Mrs. Lincoln had arranged to attend a play. The plot ended in failure, as did its January predecessor, when the Lincolns' carriage never materialized. Not surprisingly, this mishandled and fruitless affair marked the final collective act of the group.¹ The Arnold-O'Laughlin faction retreated to Baltimore and "[John] Surratt quit in disgust because he had worked hard and earnestly for the Confederacy and he felt that this was an *opera bouffe* plot."² Conspirator Lewis Paine later explained both John Surratt's permanent departure from the conspiracy and Booth's subsequent change to a plot to murder Lincoln from his insider's viewpoint. In an eleventh hour soul cleansing prior to his execution Paine stated that

Booth, who was the only one in earnest, proposed to kill Lincoln and all of the Cabinet. The rest backed out and scattered like a lot of beggars. We never heard of Surratt nor of Arnold nor any of them again . . . I deserve

¹ Bishop, The Day Lincoln Was Shot, 88-89. While the final outcome of the abduction was a failure, at least John Surratt appeared impressed with the group's efforts. In his Rockville speech he bragged that "so perfect was our communication that we were instantly in our saddles [and] on our way to the hospital."

² Ibid., 90.

to be killed and so does Booth. The rest were women and babies.³

Some time in the spring of 1865, Booth indeed made the strategic leap from plans for Lincoln's abduction to plans for his murder.⁴ Booth, ever the actor, cast himself in the leading role as Lincoln's assassin. Paine and Atzerodt, designated respectively to kill Secretary of State William H. Seward and Vice-President Andrew Johnson, were supposed to coordinate their assaults with Booth's. While Booth may have contemplated the political repercussions of a government thrown into chaos by the elimination of its inner circle, one writer feels that he more likely wanted to eliminate the man whose post-war plans dared to expand social and political horizons of the southern slaves. A reconstructed South based on Lincoln's expressed ideals would present a juxtaposed world order anathema to Booth and to others reared on the clearly stratified and strictly enforced societal roles regarding America's unique caste system. Booth's attack on President Lincoln, more a personal political statement than an attempt at

³ Wilson, Booth, 98-99. There is evidence that John Surratt went to Richmond as a direct consequence of this fiasco. He apparently was seeking a clerkship of some sort there. The trip may also have been a cover for escorting a Mrs. Helen Slater to the Confederate capitol with important dispatches. See testimony of Louis Weichmann in Benn Pitman, comp., The Assassination of President Lincoln and the Trial of the Conspirators: The Courtroom Testimony as Originally Compiled (Westport, CT, Greenwood Press, Publishers, 1974), 114.

⁴ Bishop, The Day Lincoln Was Shot, 81. The exact date of Booth's change of strategy is debated. See Sandburg, Lincoln, 4: 330 for his belief that the change occurred on the evening of 11 April 1865. See also The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies 128 vols. Published under the direction of the Hon. Daniel S. Lamont, Secretary of War. Washington, D.C.: Government Printing Office, 1880-1901, Series I, 47: 287, and Series II, 8: 853 and 8: 854-855 for dates on which the United States government believed Booth may have received sanction for his plans from the Confederate government.

systemic disruption, was, nevertheless, a challenging enterprise that Booth considered well worth the risk.

On the evening of 14 April during which President Lincoln was mortally wounded by Booth and Secretary Seward was brutally assaulted by Paine, the hierarchy of the American government was indeed temporarily shaken. When the ship of state had righted itself the temper of the times called for the meting out of swift and sure justice to all those involved in these treasonous acts. Unfortunately for conspirators Paine, Atzerodt and Herold who had played major roles in this final scheme, a military commission rather than a civilian court was selected to act as their judge and jury. The selection of a military commission held even greater misfortune for Dr. Samuel Mudd--who allegedly provided medical aid to Booth during his post-assassination flight--and Mary Surratt, now judged by history to have been merely sentient accessories or perhaps oblivious innocents in the assassination plot. An even greater misfortune awaited those who like Arnold and O'Laughlin had chosen to let their membership in the Booth brotherhood completely lapse only weeks before the assassination. Events of the next months would demonstrate that none of the accused would be able to disassociate themselves from their past or from the network of conspiracy that dragged even the most naive and peripheral along with it.

The variety of military commission that would try the Lincoln conspirators was nothing new. It had originally been an expedient of the Mexican War of 1846-1848 when General Winfield Scott, operating far outside the jurisdiction of any American court, created what he felt to be an appropriate venue to try

American citizens who transgressed either civil law or the "Laws of War."⁵ The commission that was "appointed by Secretary [of War Edwin M.] Stanton and rubber-stamped by President Andrew Johnson as well as by attorney General [James] Speed" to try the Lincoln conspirators, for instance, merely followed guidelines that had been in operation for well over one hundred years.⁶ As one historian explained these procedures, "in a military court, it was incumbent upon the prosecution not only to obtain convictions wherever they were warranted but also to present evidence bearing on the accused and to see to it that their rights were respected."⁷ Ideally then, any accused would receive equal parcels of justice from either civil courts or military commissions.

There were within the American government, however, conflicting opinions on whether these *ad hoc* tribunals could dispense justice with such equanimity. President Johnson, Lincoln's successor, felt that they were the only proper forum for a trial involving a conspiracy against the federal government. Citing Lincoln's September 1862 suspension of the writ of *habeas corpus*, Johnson saw no harm in Lincoln's--and now his own--denial of the right to a civil proceeding to such

⁵ Edward Steers, Jr., "Inter Arma Silent Leges: The Military Trial of the Lincoln Conspirators," Lincoln Herald 83 (1981): 722.

⁶ A.A. Hoehling, After the Guns Fell Silent: A Post Appomattox Narrative: April 1865 - March 1866 (Lanham, MD: Madison Books, 1990), 44.

⁷ Benjamin P. Thomas and Harold M. Hyman, Stanton: The Life and Times of Lincoln's Secretary of War (New York: Knopf, 1962), 424. Apparently the United States Supreme court was in accordance with this procedure. In the eighty-three years lifespan of military commissions, the Supreme Court had never questioned a commission's authority, only its jurisdiction. See Steers, "Military Trial of the Conspirators," 722.

violators of the common weal. The "rebels, insurgents, aiders and abettors" designated in Lincoln's executive action was an accurate description of the Booth conspirators to anyone such as Johnson who, along with Secretary of War Stanton, had a preconceived notion of a vast Confederate plot against the Washington government, of which Lincoln's assassination was only a single facet.⁸ Johnson, as chief executive and as an advocate of the commission's brand of justice, would eventually--according to tradition--have to decide whether or not the findings of the commission would be implemented, regardless of their severity. Simply put, the findings of the commission carried no weight without a president's signature.

Secretary of War Stanton, the creator of this particular military commission, was according to one source, aware that the evidence being collected by Judge Advocate Joseph Holt for the trial "might not satisfy the requirements for conviction in a civil court."⁹ Far better then, Stanton apparently reasoned, to try the accused conspirators before a military commission where the rules of evidence would be less constricting and punishment more likely to be stern and swift.¹⁰ According to Secretary of the Navy Gideon Welles--no admirer of

⁸ Beverly Bone, "Edwin Stanton in the Wake of the Lincoln Assassination," Lincoln Herald 82, (1980): 515. David Miller Dewitt, in The Judicial Murder of Mary E. Surratt (Baltimore: John Murphy & Co., 1895), 5, presents Stanton as vengeful, suspicious, and single-minded to the extreme. "He saw, heard, felt and cherished every thing that favored [a conspiracy engineered by the Confederate hierarchy]," claims Dewitt. "He would see nothing, would hear nothing, and hated every thing, that in the slightest degree mitigated against it. Upon this theory he began, and upon this theory he prosecuted to the end, every effort for the discovery, arrest, trial and punishment of the murderers."

⁹ Thomas and Hyman, Stanton, 422-423.

¹⁰ *Ibid.*, 423.

Stanton's--Stanton felt that the need for this form of jurisprudence was "clear and positive" and, by means of what Welles called "rash, impulsive, and arbitrary measures" was eventually able to draw others of importance into his fold as well.¹¹

Chief among Stanton's converts to the idea of a military commission was Attorney General Speed, someone Welles perceived to be "otherwise inclined" toward this form of criminal justice.¹² Once convinced, however, Speed shared with Judge Advocate Joseph Holt the feeling that a commission was "the only real method of eliciting the whole truth."¹³ It was Speed, in addition, who perceived the conspirators as belligerents who had violated the laws of war and, as such, could only find justice in a trial conducted by their military peers.¹⁴

Stanton selected Holt to present for the government and fellow Ohioan and friend John Bingham as one of Holt's assistants.¹⁵ Judge Advocate Holt, a significant variable in the equation and someone perhaps concerned with the intrusive activities of the press, subsequently advocated a closed door military proceeding. This development was seen by the forward looking Secretary of the Navy Welles as "another objectionable feature and [one] likely to meet

¹¹ Gideon Welles, Diary of Gideon Welles: Secretary of the Navy Under Lincoln and Johnson (Boston: Houghton-Mifflin, 1911), 2: 303-304.

¹² Ibid.

¹³ Ibid., 305.

¹⁴ Steers, "Military Trial of the Conspirators," 723.

¹⁵ Thomas and Hyman, Stanton, 25, 136, 424. Bingham, according to Thomas and Hyman, had previously played a role in Lincoln's appointment of Stanton as Secretary of War in 1862.

condemnation after the event and excitement have passed off."¹⁶ Welles, sensitive to the public's perception of the trial, believed "[i]t would be impolitic, and I think unwise and injudicious to shut off all spectators and make a 'Council of Ten' of this commission,"--an admonition that was totally ignored.¹⁷

Thomas Mealey Harris, who would eventually take a seat on the commission's panel of nine judges was, not unexpectedly, an advocate of military justice in time of war. He never denied that civil courts had been open in Washington throughout the war--one of the chief arguments against military commissions--but he adroitly qualified their existence and simultaneously provided justification for a military court in this particular case. He argued that "the great crime (the assassination) had been committed during the existence of a state of war and the courts were only able to carry out their function under the protection of the arms of the government."¹⁸ Continuing, he argued that a civil trial of alleged assassins of the country's president would have no chance of avoiding a "miscarriage of justice." He especially foresaw problems with prospective jurors in the event of a civil trial. A "jury of partizans [sic]", as he called them, would inevitably result whether the panel were of a heterogeneous or a homogenous nature. The former, he predicted, would surely result in a hung jury and the

¹⁶ Welles, Diary, 2: 303.

¹⁷ Ibid., 305.

¹⁸ Thomas Mealy Harris, The Assassination of Lincoln, A History of the Great Conspiracy, Trial of the Conspirators by a Military Commission and a Review of the Trial of John H. Surratt (Boston: American Citizen Co., 1892), 82.

latter would certainly render a biased judgment.¹⁹ Harris would no doubt have agreed with a July 1865 government paper on the constitutionality of military commissions which made it clear that

The fact that the civil courts are open does not affect the right of the military tribunal to hold [the accused] as a prisoner and to try. The civil courts have no more right to prevent the military, in time of war, from trying offenders against the laws of war than they have a right to interfere with and prevent a battle.²⁰

Those who favored the military commission clearly rationalized that any other legal venue could not give the government and the people of the United States the verdict that they all deserved.

Negative opinions of military commissions ranged generally from virulent to ominous and public perceptions regarding them did not demonstrate confidence in their professed egalitarian motives and protocols. The most straightforward statement against them claims simply that the need for martial law had ended with General Robert E. Lee's surrender of the main Confederate field army at Appomattox on 9 April 1865.²¹ Peace had signalled the return to the *status quo ante* and, with it, the end of military commissions. Vaughn Shelton has an entirely different and much more sinister opinion of them. He explains that since the *raison d'être* of a military commission was to convict and not to conduct an unbiased investigation, it follows that substantiation for preconceived notions becomes the true object of such a trial. Any "ill-fitting" facts are, in his opinion,

¹⁹ Ibid.

²⁰ Steers, "Military Trial of the Conspirators," 723.

²¹ Ibid.

discarded, altered, or contradicted by witnesses of the government.²²

Several contemporaries of Johnson, Stanton, Speed, and Holt were convinced that choosing the commission form of justice would do irreparable damage to the national fabric. Maryland Congressman Henry Winter Davis, writing to President Johnson concerning the imminent trial of the conspirators, issued a warning against the use of a military commission to try accused civilians. "It is in the very teeth of the express prohibition of the Constitution," he wrote. Continuing, he advised Johnson that "[the] only safety is to stop now; delegate the accused to the law, & let the courts of the United States satisfy the people that the prisoners are either guilty or innocent in law; for the people want justice not revenge."²³ Nor did Davis visualize public outcry against merely the commission itself. Again writing to Johnson, Davis explained that choosing a military commission over a civil court would "prove disastrous to yourself, your administration & your supporters who may attempt to apologize for it."²⁴ Davis's remarks would, in time, prove to be quite accurate.

Perhaps the most telling and the most significant remarks concerning military commissions come directly from those who had the misfortune to be subpoenaed to appear before one. Henry Kyd Douglas, a Confederate staff

²² Shelton, Mask for Treason, 8. In fact, one need not pry too deeply into this commission's proceedings to find accusations of suborned and perjured testimony that corroborate Shelton's claims.

²³ Gerald S. Henig, Henry Winter Davis: Antebellum and Civil War Congressmen from Maryland (New York: Twayne Publishers, Inc., 1973), 245.

²⁴ Leroy P. Graf and Ralph W. Haskins. The Papers of Andrew Johnson (Knoxville: University of Tennessee Press, 1967-1983), 8: 65-66.

officer eventually called before what he called the "Court of Death" trying the Lincoln conspirators, spoke in provocative but non-specific terms regarding the commission. He was appalled at the high-handed proceedings being conducted wherein he claimed that "passion ruled everything." Following his own appearance before the commission he remarked that "[i]f Justice ever sat with unbandaged, blood-shot eyes, she did on this occasion."²⁵ John Brophy, another witness during the same trial, could comment afterwards only on the road not taken by the commission's panel. He felt that the trial of Mrs. Surratt and the others should have been--and, by implication was clearly not--conducted "[i]n an open, fair, legal, authorized manner, beyond cavil, suspicions and distrust." By comparison, he claimed to have seen or to have experienced firsthand at the 1865 trial commission ". . . violent process against the statute, . . . departure from established forms, . . . disregard of venerable precedents, . . . overthrow of ordinary tribunals, . . . cramping of evidence, . . . [and] intimidation and cruelties. . . ."²⁶ To Brophy, the trial by commission in which he was involved had obviously been a legal, constitutional, and moral travesty.

Former United States Attorney and sitting Maryland Senator Reverdy Johnson, as one of Mary Surratt's defense team at the trial of conspirators, attacked the commission's constitutional foundations during his closing arguments. The government, in its argument, had earlier attempted to justify the genesis of

²⁵ Henry Kyd Douglas, I Rode With Stonewall (Chapel Hill: The University of North Carolina Press, 1940), 341-342.

²⁶ Joseph George, Jr., "The Trial of Mary Surratt: John P. Brophy's Rare Pamphlet," Lincoln Herald 93 (1991): 20.

the commission with the vague phrase from the Constitution giving Congress the power to make rules for the government and regulations of the land and naval forces. Johnson, with an obvious reference not only to his civilian client Mary Surratt but to the other accused conspirators as well, countered that "[n]o artifice of ingenuity can make these [aforementioned] words include those who do not belong to the army and navy." He also argued that if the commission could not refer to a crime as being uniquely military in nature or could not refer to a criminal act by definition and cite its punishment, it must be a civil offense and thus be triable only in civil court. He further agonized over the inevitable inequities resulting from the commission's denial of Fifth Amendment guarantees of a grand jury to the defendants.²⁷

Among later detractors of the commission, few were as openly abhorrent of the entire proceeding than David Miller Dewitt. Commenting on the commission in 1895, Dewitt left no room for further interpretation on the matter. "It was unconstitutional. It was illegal. It was unjust. It was inhumane. It was unholy. It was pusillanimous. It was mean. And it was each and all of these in the highest or lowest degree. It resembled the acts of savages, and not the deeds of civilized men."²⁸ It was into this context of strong, conflicting positions on the concept, constitutionality, and fairness of military commissions that Mary Surratt and the other Lincoln conspirators would enter.

²⁷ Pitman, Trial of the Conspirators, 251-253. Johnson would later act as an attorney for petitioner Lamdin Milligan in the landmark and strikingly similar *ex parte Milligan* case.

²⁸ Dewitt, Judicial Murder, 258.

The trial of the Lincoln murder conspirators began on 9 May 1865 in Washington D.C. with the reading of the charges and specifications against the accused. All eight defendants were charged with

maliciously, unlawfully, and traitorously, and in aid of the existing armed rebellion against the United States of America . . . combining, confederating, and conspiring together with John H. Surratt, John Wilkes Booth, Jefferson Davis . . . and others unknown, to kill and murder Abraham Lincoln, late . . . President of the United States . . . Andrew Johnson, Vice-President of the United States . . . William H. Seward, Secretary of State of the United States . . . and Ulysses S. Grant, Lieutenant-General of the Army of the United States.²⁹

Individual conspirators were then charged with other associated criminal acts. It was specified that Mary E. Surratt, for instance, "in further prosecution of said conspiracy did . . . receive, entertain, harbor, and conceal, aid and assist [the said conspirators] . . . with intent to aid, abet, and assist them in the execution thereof, and in escaping from justice after the murder of the said Abraham Lincoln."³⁰ A nine-member military commission selected by Assistant Adjutant General Edward D. Townshend and presided over by Major-General David Hunter (who had been serving on courts-martial since February) listened as the defendants David E. Herold, George A. Atzerodt, Lewis Paine, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt, and Samuel A. Mudd entered their pleas of "not guilty."³¹ As one might expect in a trial conducted by a military commission, all constitutional and civil libertarian appeals regarding the legality and the

²⁹ Pitman, Trial of the Conspirators, 18-20.

³⁰ Ibid., 20.

³¹ Ibid., 21.

jurisdiction of the commission itself were summarily dismissed. Attempts by the defense to challenge the jurisdiction of the court based on the civilian status of their clients and on the fact that civil courts were both currently operational in Washington and had been throughout the war also met with Judge Advocate Holt's stern position to the contrary. Not willing to budge, Holt also denied pleas for severance--separate trials for the accused--even in the face of the defense attorneys' arguments that "their [clients'] defense will be greatly prejudiced by a joint trial."³²

The initial plea phase of the trial having concluded, the formal proceedings involving over 150 witnesses opened in earnest on 12 May. The sheer volume of testimony did not bode well for the principals in the conspiracy and the manner in which it was presented left little room for legal maneuvering. First, the context of a grand conspiracy with a strong Richmond-Washington-Montreal axis was created. Then with a synergistic flourish, the activities of the individual conspirators were introduced into that context and given even greater magnitude. The revelations of wide-ranging covert Confederate activities that included plans to detonate a bomb at the White House, introduce cholera into Northern cities, poison Northern reservoirs, burn New York City, and release by force of arms

³² Harris, Military Commission, 108-109. See also Ervin Leon Jordan, "A Painful Case: The Wright-Sanborn Incident in Norfolk, Virginia, July-October, 1863" (MA Thesis: Old Dominion University, 1979), 21, for the trial and execution by military commission of Dr. David M. Wright of Norfolk for the murder of Union officer Second Lt. Alonson L. Sanborn. The defense raised similar questions regarding jurisdiction, the absence of Fifth Amendment guarantees, state versus federal law, military trials of civilian, and *habeas corpus* liberties. The Judge Advocate in this case "derided Wright's pleas as 'a waste of time' and said they had been tolerated 'as a matter of professional courtesy.'"

thousands of Confederate prisoners of war from Northern camps established a context of hysteria and paranoia that all but guaranteed that objectivity would not play a significant role in reaching a verdict.³³ Testimony alleging that these activities were conducted with the tacit approval of the Confederate government or in several instances with its foreknowledge and financial backing only made it easier for the prosecution to push their the guilt-by-association strategy. By contrast, the attorneys for the hapless defendants involved exclusively or--worse--merely tangentially in the kidnapping or assassination plots found it nearly impossible to extricate their clients from the web of general conspiracy being systematically presented to the court. Due to the suggestion of this organized plan to disrupt the United States government, the accused would be seen as mere minions of Jefferson Davis, the fountain from which all treason was thought to have welled.

The life of Mary Surratt, arguably the least involved of the conspirators in the Booth plots but certainly the only one whose well-being had any direct bearing on her son's subsequent actions, rested squarely on the culpability generated by the testimony of Louis Weichmann and John Lloyd. Weichmann, as a boarder at Mary Surratt's Washington, D.C. boardinghouse and John Lloyd, as the tenant of the Surratt's farm outside of Washington, were in a strong position as intimates of the Surratt family's daily activities either to refute or corroborate any question of her complicity. Weichmann's testimony, unfortunately for her, was damning in the extreme. He testified to suspicious activities at the Surratt boardinghouse that

³³ Pitman, Trial of the Conspirators, testimony of Sanford Conover, 28-31.

helped to characterize it as a safe place for Confederate blockade runners and governmental couriers; he claimed that aliases for conspirators and other visitors at the Surratt house were randomly, amateurishly, and clumsily used and occasionally changed imparting a disturbing air of nonchalance to the conspiracy; he evoked the image of a disconsolate Mrs. Surratt "weeping bitterly" for her son's future following her discovery of his participation in the aborted 20 March 1865 kidnapping attempt; he testified to carrying messages periodically to Booth from Mrs. Surratt regarding what she called "private business"; he detailed the appearances--some of them rather frequent--at the Surratt boardinghouse of Booth and fellow conspirators Lewis Paine, George Atzerodt, and David Herold; and, most damaging, he recounted a trip to John Lloyd's Surrattsville tavern with Mrs. Surratt on the Tuesday prior to the assassination during which she placed into Lloyd's hands a package from Booth that he was instructed to hold for personal delivery to the fleeing assassins.³⁴ With Weichmann's testimony, the prosecution had a circumstantial case against Mary Surratt that was far from airtight but one that placed her near enough to the epicenter of the conspiracy to pose a serious threat to her life. It is not surprising then that John Surratt had a vindictive attitude toward Weichmann, a man he labelled as " . . . my nemesis, a man who has done more than any one living or dead to bring disgrace on me and my family."³⁵

³⁴ Pitman, Trial of the Conspirators, testimony of Louis Weichmann, 113-120.

³⁵ Hanson Hiss, "John Surratt's Story," Washington Post, 3 April 1898.

As if Weichmann's disclosures were not incriminating enough, John Lloyd's testimony corroborated both the major and minor details of Weichmann's disclosures and called into serious question Mrs. Surratt's alibi that had been offered to explain her trips to Surrattsville on both the Tuesday prior to and the day of the assassination. Lloyd recounted Mrs. Surratt's inquiry into the status of the "shooting irons" that had previously been dropped off and secreted at Lloyd's tavern by her son John. He also told of Mrs. Surratt's delivery of a package containing a field glass to his place on the day of the assassination as well as of her request on that day that bottles of whiskey be ready that night. "There will be parties here to-night who will call for them," he recalled her saying before she and Weichmann began the trip back to Washington.³⁶ Lloyd further pointed out that whereas Mary Surratt may have claimed to have journeyed to Surrattsville on 14 April with the expressed purpose of speaking with a Mr. Nothe concerning an outstanding debt, he himself never did see Mr. Nothe although the two were supposedly in the next room.³⁷ Nothe's testimony later corroborated Lloyd's statement.

While there was other circumstantial testimony regarding Mary Surratt's secessionist leanings, her alleged derogatory remarks about Lincoln, and both the Confederate and Booth memorabilia found at her home, no one's testimony did more damage than Weichmann's and Lloyd's. Granted, there were, in rebuttal, witnesses who painted a much different portrait of the matronly boardinghouse

³⁶ Pitman, Trial of the Conspirators, testimony of John Lloyd, 85-86.

³⁷ *Ibid.*, 116.

keeper and her activities. Friend, boarders, and hired workers spoke of her kindness to Union soldiers, her loyal sentiments, and her Christian lifestyle.³⁸ Judging from the eventual verdict by the commission, however, few were convinced that her overt businesslike propriety was much more than an affected facade disguising her covert and treasonous activities.

Due to the absence of John Surratt at the trial, any decision regarding his alleged complicity had to be deferred until his capture. This may help explain the United States government's harsh treatment of his captive mother and its vacillating attitude towards her fugitive son. There is little doubt, however, that Stanton wished John Surratt to be present. When, in the days following the assassination, "information indicated that young Surratt had escaped to Canada," Stanton grew "despondent from fear" that Surratt like Booth, would escape justice.³⁹ Although *in absentia*, John Surratt, nevertheless, emerges as an unchallenged intimate of the Booth conspiracy. Testimony, largely circumstantial, linked him to practically every phase of the attempts to abduct and kill the President and immersed him deeply in contextual aspects of the treasonous activities headquartered at his mother's boardinghouse. One witness presented him as being on such a level of intimacy and trust with Booth as to give his own name as reference for Booth. Another, tailor David C. Reed, established Surratt's presence in Washington on the afternoon of assassination. He had taken "particular notice of his clothing," he testified, "for it was my business to make

³⁸ Ibid., 135-137.

³⁹ Thomas and Hyman, Stanton, 420.

clothes." Yet another witness, Joseph M. Dye, claimed that it was Surratt who called out the time for the anxious Booth loitering outside Ford's Theatre on the evening of 14 April.⁴⁰ Sanford Conover, whose testimony had earlier in the trial helped to develop the general conspiracy, now established John Surratt as the bearer of Lincoln's death warrant. Conover testified that on 6-7 April 1865 he witnessed Surratt delivering dispatches from Richmond to Jacob Thompson, chief of Confederate operations in Canada. The incident caused Thompson to remark "This makes the thing all right." Conover was sure that this remark was a reference to the plot to assassinate United States government officials.⁴¹

But it was Louis Weichmann and John Lloyd who again painted the darkest details of Surratt's portrait. Weichmann's testimony demonstrated the depth and breadth of Surratt's involvement in the conspiracy.⁴² He sketched the menacing and hulking figure of Lewis Paine calling for Surratt several times at the Surratt boardinghouse. He recreated an unsettling scene of Surratt and Paine "playing with bowie knives" on John's bed amid an array of other weapons and incriminating paraphernalia. He lifted a scene directly from the failed March

⁴⁰ Pitman, Trial of the Conspirators, testimony of James W. Pumphrey, David C. Reed, and Sergeant Joseph M. Dye, 72, 83.

⁴¹ Ibid., testimony of Sanford Conover, 28.

⁴² See Anon., "A Remarkable Lecture," Lincoln Herald, 29, for John Surratt's view on Weichmann's level of involvement in the conspiracy. He would state the Weichmann knew so much because he himself was deeply involved. John Surratt would later claim that "[Weichmann] had been told all about it and was constantly importuning me to let him become an active member. I refused for the simple reason that I told him he could neither ride a horse nor shoot a pistol . . . two necessary accomplishments for us."

abduction plot when Surratt entered the boardinghouse "very much excited" with a gun in hand fuming that he would shoot anyone who dared to try to gain entrance to his room. Seeing only the government's long arm stretching out for him, Surratt ranted that his "prospect is gone . . . [his] hopes . . . blighted."⁴³ He recalled accompanying Surratt to a Washington hotel where Surratt then made living arrangements for Lewis Paine, someone then described to him as "a delicate gentleman who was to have his meals sent up to his room." He also recounted an evening just prior to the assassination when he, Surratt, Atzerodt, and Herold together attended a performance at Ford's Theatre ostensibly to witness Booth's final stage appearance but in reality to reconnoiter the floor plan for future operations there. Finally, Weichmann reconstructed a meeting between Booth, Dr. Mudd, and Surratt at the National Hotel in Washington during which the three of them conducted some mysterious business in the next room. "Booth took out an envelope," he explained, "and on the back of it made marks with a pencil. I should consider it writing, but from the motion of the pencil it was more like roads or lines."⁴⁴ He might as well have said that they were mapping out their escape route. Following the testimony of Weichmann, John Lloyd, as he had done previously and so effectively with Mrs. Surratt, tightened several loopholes through which the defendant might slip.

The case against the conspirators proceeded practically without serious challenge until near the end of the trial, when the nearly flawless presentation by

⁴³ Pitman, Trial of the Conspirators, testimony of Louis Weichmann, 118.

⁴⁴ Ibid., 113-115.

the prosecution began to show disturbing signs of misjudgment and mismanagement. During the waning moments of the trial and again within two years of its conclusion, stories emerged regarding testimony being allegedly suborned, witnesses perjuring themselves, evidence being manufactured by the prosecution, and the court creating the illusion that the life of a marginally-involved woman, Mary Surratt, had been placed in jeopardy in order to force her fugitive son's hand.

The first attack was on the allegation of a grand conspiracy choreographed by the Confederate government. Alleged Confederate insiders Sanford Conover and James B. Merritt, who had been largely responsible for establishing the contextual backdrop against which all other conspiratorial events were eventually held up, were found to be perjurers of the first degree. Originally they had contacted Holt and Stanton who used both the depth and breadth of their evidence to strengthen the government's claim of a broad conspiracy.⁴⁵ As witnesses, however, Conover and Merritt could not, in the final analysis, have been more disappointing to the prosecution. "Their startling claims of high-ranking Confederate complicity in the assassination," explains one historian, "lost their impact in the face of their numerous and bold-faced perjuries."⁴⁶ "It is not wonderful," summarized an advocate of Mary Surratt,

that the Military Commission, which will live in all history covered with the infamy of the murder of Mrs. Surratt, would have received the testimony of

⁴⁵ William A. Tidwell, April '65: Confederate Covert Activity in the American Civil War, (Kent, OH: Kent State University Press, 1995), 112.

⁴⁶ *Ibid.*, 113.

these patent perjurers, Conover . . . and Merritt, but it is amazing that the Government should ever, upon their ex parte, uncontradicted statements, have based an accusation.⁴⁷

Then came the allegations of suborned testimony on the part of star witness Louis Weichmann. There had already been testimony that Weichmann had secessionist leanings, that he had quoted figures to a Confederate blockade runner regarding Southern prisoners in camps, and that he had, in fact, "done all the he could for the South . . . as a friend of the South, as a Southern man or a secesh sympathizer would."⁴⁸ Now, word came that Weichmann had also perjured himself, and had, in fact, been pressured to do so by agents of the United States government who had threatened him with the terrifying specter of death by hanging if he did not present their particular version of the facts. Having been originally swept up in the government's efforts to arrest anyone directly or indirectly connected with the conspiracy, Weichmann would have been fair game for such threats. Now, however, with the execution of the sentence for the

⁴⁷ W.W. Cleary, "The Attempt to Fasten the Assassination of President Lincoln on President Davis and other Innocent Parties," a paper read to the Louisville Branch of the Southern Historical Society, n.d., Southern Historical Society Papers, Rev. J. William Jones, ed., (Richmond, VA: William Ellis Jones, Printer, 1876-1959.), 9:324.

⁴⁸ Pitman, Trial of the Conspirators, 133. See also Thomas Reed Turner's Beware the People Weeping: Public Opinion and the Assassination of Abraham Lincoln (Baton Rouge: Louisiana State University Press, 1982), 161-162 for the author's opinion that Weichmann took a job with the War Department solely to pass information onto John Surratt. For a contrasting view on Weichmann's role within the conspiracy, see Otto Eisenschiml, "A 'Study' of John Surratt?" Journal of Illinois State Historical Society, 51 (1958): 183. The author's opinion: "In truth, Weichmann hardly had access to important dispatches for he was a clerk in the office of the Commissary General of Prisoners, which contained only the number of prisoners on hand which he slipped to Surratt for what they might have been worth."

convicted conspirators imminent, Weichmann, according to one source, experienced a serious attack of guilt.

A sixteen count affidavit submitted to President Johnson on 7 July 1867 detailed Weichmann's alleged confrontation with his conscience. On that date John Brophy, friend of the Surratt family, claimed that Weichmann had made disclosures to him regarding his previous testimony and the methods used by the agents of the government to gain it. Brophy claimed that Weichmann had told him that he had been "threatened with death by Mr. Stanton . . . unless he would at once reveal all about the assassination," that "he would rather be hooted at as a spy and informer . . . than be tried as a conspirator and have his future hopes blasted," and that "he swore to a deliberate falsehood on the witness stand." Directly regarding Mary Surratt, Brophy swore that since the trial, Weichmann had told him that to his knowledge she herself had no connection with the conspiracy and that despite her continual maternal concern and her incessant pleading, John Surratt had kept the true nature of his activities from her. Summarizing his testimony during the Mary Surratt phase of the trial, Weichmann allegedly told Brophy "that he would have presented her in a more favorable light had he not been intimidated." Additionally Brophy claimed that Weichmann had thought about contradicting Judge Advocate Holt by means of a letter regarding these revelations, but that, "he had no confidence in Holt."⁴⁹ Significantly, this

⁴⁹ George, "Brophy's Pamphlet," 20. See Weichmann's testimony in Pitman, 120, corroborating Brophy's claim that Mary Surratt knew little if anything of her son's activities. Weichmann stated that "Surratt once made the remark to [me] that if he succeeded in what he called his cotton speculation his country would love him forever and that his name would go down green to prosperity."

affidavit, reveals a Brophy expert, had been presented to Mary Surratt's attorneys and had then been in the hands of the military commission for two weeks before the end of the trial, but nothing was done about it.

Mary Surratt's other chief accuser, John Lloyd, has been held up to a similarly unflattering light by one writer. Expressing his low regard for the injustice suffered by the widow Surratt at the hands of the government, he claims that "[l]ike Weichmann's, [Lloyd's] also was the frenzied effort of a terror-stricken wretch to avoid impending death by pushing forward someone to take his place."⁵⁰

There is only one other way to evaluate the statements of the witnesses

Weichmann and Lloyd, according to the same writer

The testimony of [Weichmann and Lloyd], suborned as they were alike by their terrors and their hopes, perfectly reconcilable with the alternative hypothesis, either that the woman in what she did was an innocent dupe of the fascinating actor, or that she was unaware of the sudden transformation of the long-pending plot to capture, of which she might well have been a tacit well-wisher, into an extemporaneous plot to kill.⁵¹

What remains, if one subscribes to this theory, is that certain officials of the government may very well have believed in the innocence of Mary Surratt--or perhaps in her guilt merely as an accessory and whether in spite of this or because of it, had used her as a sacrificial pawn to draw out her fugitive son. Her death may have been nothing more than an inadvertent conclusion to a chain of events that had begun with her arrest. Her son's reluctance to appear before the same type of proceeding is therefore understandable and may additionally mark the

⁵⁰ Dewitt, Judicial Murder, 142.

⁵¹ Ibid., 142-143.

genesis of his lengthy sojourn in Europe. Several historians share the belief in this scenario. "Mary E. Surratt," states one of them, ". . . suffered the death of shame, not for any guilt of her own, but as a vicarious sacrifice for the presumed guilt of her fugitive son."⁵² Mary Surratt was human bait in his opinion. Since the government "could not find the son, they held the mother as hostage for him, and they clung to the cruel expectation that by putting her to the torture of a trial and a sentence, they might force the son from his hiding place."⁵³

Summoning unreliable witnesses such as Weichmann and Lloyd is no crime, however. It may be, as it appeared to be in this case, simply a manifestation of an unwavering faith in a system that would result in conviction regardless of any mismanagement on the part of the government. Manufacturing witnesses, on the other hand, is a criminal act. Dewitt claims that Lafayette Baker was given that very task during the trial of the conspirators. According to him, Baker's "grand carnival of detectives" were ordered to arrest all suspects and "by promising rewards, threats, deceit, force, or any other effectual means, to extort confessions and procure testimony to establish the conspiracy whose existence had been postulated."⁵⁴ Baker's later characterization by the House Judiciary Committee appears to render any defense of his integrity useless. "It is doubtful," they concluded, "whether he has in any one thing told the truth, even by

⁵² Ibid., 144. See also Thomas and Hyman, Stanton, 426.

⁵³ Dewitt, Judicial Murder, 16. Found significantly in a chapter entitled "The Bureau of Military (In)Justice."

⁵⁴ Ibid., 7.

accident."⁵⁵ Baker's alleged expediency did nothing to improve the government's already tainted image.

The final, most disparaging, and most unresolved chapter of the trial of the conspirators as it concerned the Surratt family details the plea made for Mary Surratt's life following her conviction. When a two thirds vote for Mrs. Surratt's execution was reached, it was only "on condition that five members of the commission be permitted to petition President Johnson for a commutation of her sentence from death to life imprisonment by reason of her age and sex."⁵⁶ Judge John Bingham drew up the petition, secured the required signatures, and presented it to the president. According to Thomas Mealey Harris, a member of the commission, the president and the full cabinet "without a dissenting voice" upheld the findings of the commission and made no exceptions for Mrs. Surratt.⁵⁷ When, on 7 July, Johnson refused to make an exception for the prayer which Mary Surratt's counsel had entered for a writ of habeas corpus, General Winfield Scott Hancock, in command of the prisoners, was then directed by Johnson to carry out the execution orders already given.⁵⁸

⁵⁵ Ibid., 6.

⁵⁶ Thomas and Hyman, Stanton, 429.

⁵⁷ Harris, Military Commission, 114.

⁵⁸ Ibid., 115. Compare this unsympathetic portrait of President Johnson toward women with Welles, Diary, 2: 474. In this 4 April 1866 entry Welles suggests to the president that Rafael Semmes, Confederate raider of Union shipping during the war, should be given unconditional release rather than parole. Semmes's wife apparently had been "annoying [Johnson], crying and taking on for her husband." Johnson's considerations led Welles to remark that the president "had a gentle and kind heart, melted by women's tears."

Harris's, interestingly, is the only one of several versions of what happened with the petition. Stanton biographers Benjamin P. Thomas and Harold M. Hyman claim that during Judge Advocate Holt's interview with an ailing Johnson on 5 July the possibility of clemency was discussed then dismissed by mutual agreement. They claim, in addition, that while Holt may have discussed clemency with the president, he never showed Johnson the actual clemency petition.⁵⁹ Holt, they maintain, made no reference to the petition in his brief to Johnson or in his report to Stanton. Believing that Stanton had nothing to do with this intrigue, Thomas and Hyman argue that "the conclusion seems inescapable that Holt, determined that the major conspirators should die, willfully concealed the contents of the petition from the president."⁶⁰ Exonerating Stanton further, Thomas and Hyman believe it unlikely "that the petition could have been omitted from [the] published record of the trial without Stanton's knowledge and consent. And complicity in the one (knowledge) implies complicity in the other (consent)."⁶¹

William C. Davis's account of Stanton's role, in marked contrast to Thomas and Hyman's, does not leave Stanton nearly as unblemished. While not addressing Stanton's specific role in the presentation of the petition to the President, Davis claims that Stanton had his own private agenda. According to his sources, "[Stanton] swore to secrecy a government prosecutor in the case, John

⁵⁹ Thomas and Hyman, Stanton, 429-430.

⁶⁰ Ibid., 430. See also Davis, The Long Surrender, 211 and Dewitt, Judicial Murder, 184-186.

⁶¹ Thomas and Hyman, Stanton, 432.

Bingham of Ohio, exacting from him a promise never to divulge his knowledge of the backstage maneuvers which had led to the conviction and execution of [Mary Surratt]."⁶²

One final unflattering scenario involves the government's disposition of an eleventh hour contingency. Conspirator Lewis Paine, on the morning of his scheduled execution, told General J.F. Hartranft, in charge of the military prison, that Mrs. Surratt was innocent of any and all complicity in the assassination. Accordingly, Hartranft sent John Brophy to the White House to make a final appeal based on Paine's disclosure, but, in Brophy's words, "Johnson remained adamant, took no action, [and] never acknowledged receiving Hartranft's communication."⁶³ If Brophy can be believed, Johnson, like Stanton and Holt, was guilty of decision-making that resulted in Mary Surratt's execution.

One may now downplay or even entirely dismiss all of the above versions of the machinations that led to Mary Surratt's execution as frantic scapegoating, but in 1865 a stigma of impropriety, if not deceit, was attached to the executive branch of the United States government. Years later, one writer, moved by what he perceived as blatant injustice and lost opportunities for clemency, served a literary indictment of murder to all those who had played major roles in the Mary Surratt tragedy. He included, in succession

the private soldiers who dragged [Mrs. Surratt] to the scaffold and put the rope about her neck, the Major General whose sword gave the signal for the drop to fall . . . the nine military officers and the three advocates who

⁶² Davis, The Long Surrender, 277.

⁶³ George, "Brophy's Pamphlet," 17.

tried and sentenced this woman to death . . . [and] the President of the United States, who approved the court, approved its findings, and commanded the execution of the sentence.⁶⁴

Saving the most venomous outpouring for Stanton, Dewitt chastised

the Secretary of War who initiated the iniquitous process, pushed on the relentless prosecution, shut his own ears and the ears of the President to all pleas for mercy, presided . . . over the scaffold, and kept the key of the charnel house, where . . . the slaughtered lady lay mouldering in her shroud.⁶⁵

With sentiments that strong against certain officers of the American government regarding their handling of the Mary Surratt case, it follows that those officials involved would want closure to the incident to be engineered as quickly as possible in order to begin a healing process. Following the executions and following this line of logic, even the gallows at the Capitol Prison was hastily disassembled, "as if by some casuistry of the military mind this excising and elimination would remove moral stigma and personal involvement."⁶⁶ Far more important to the government and infinitely more difficult for the government than the removal of material reminders of their mismanaged military trial, steps had to be taken to insure that the memory of the widow Surratt or of her ordeal at the hands of the military commission were not resurrected. For John Surratt, who had been hiding in Canada for some time now and whose intimate knowledge of

⁶⁴ Dewitt, Judicial Murder, 135-136.

⁶⁵ Ibid., 137.

⁶⁶ Hoehling, Post-Appomattox, 101. The author's stand on Mrs. Surratt is extremely clear. The book, in fact, is dedicated to her: "Her illegal execution by the government of the United States endures as a vile blot on the character and soul of the nation."

the conspiracy from an insider's point of view could easily call into question the findings of the 1865 trial, this meant that the government might be willing to unofficially arrange for his continued freedom at the price of his continued silence. He had, in fact, breached this unofficial gag rule only once when during the trial of his conspirators he had attempted to discover the status of his mother. Surratt himself would claim that he had indirectly contacted one of her attorneys--either Frederick Aiken, John W. Clampitt or Reverdy Johnson--and had been told by Johnson to "be under no apprehension as to any serious consequences. Remain perfectly quiet, as any action on your part would only tend to make matters worse. If you can be of any service to us, we will let you know, but keep quiet."⁶⁷ This would seem to explain Surratt's apparent lack of communication with his mother and to absolve young Surratt of any accusations of moral deficiency were it not for others who saw different motives for his compliance. Louis Weichmann hints at two alternate, but closely related scenarios terminating in the same eventual result. He believes that others may have either dissuaded Surratt from or even physically deterred him from his mission to rescue his mother because the *quid pro quo* arrangement made with Frederick, one of Mary Surratt's attorneys, Aiken would have required Surratt's testimony against Jefferson Davis--a bargaining chip considered unacceptable to either Surratt or to his superiors.⁶⁸ Lincoln scholar Alfred Isacson sees the son's reluctance to clear

⁶⁷ Anon., "A Remarkable Lecture," 32.

⁶⁸ Floyd E. Risvold, ed., Louis J. Weichmann: A True History of the Assassination of Abraham Lincoln and of the Conspiracy of 1865 (New York: Alfred A. Knopf, 1975), 326-327.

his mother's name as an indication that John was only concerned with his own well-being. "His family training, his schooling, the society he lived in, would have demanded a selfless attempt at rescue." John's inaction, according to Isacson, labelled him as "a coward of the lowest sort."⁶⁹ Ohio Congressman Albert Gallatin Riddle, later asked by Secretary of State Seward to aid in the prosecution of John Surratt, recalled this same inertia by John Surratt to the government's offer of an unconditional pardon. Riddle held only contempt for the "wretched son whose only response was flight."⁷⁰

⁶⁹ Alfred Isacson, "What Would You Have Done?," a speech given to the Lincoln Group, New York City, 24 April 1979. Transcript is in the Surratt Society holdings in Clinton, Maryland.

⁷⁰ Albert Gallatin Riddle, Recollections of War Times: Reminiscences of Men and Events in Washington, 1860-1865 (New York: G.P. Putnam's Sons, 1895), 340.

CHAPTER III

THE ODYSSEY OF JOHN SURRETT

On 26 September 1865 George Melly, Justice of the Peace for the borough of Liverpool, England, was presented with information that reopened the Abraham Lincoln murder case and caused untold consternation in official Washington, D.C. On that date, more than five months after the assassination of the president and over two months since the execution of the chief conspirators in that crime, an informant swore to him that John Harrison Surratt, the sole conspirator still at large, had, only the day before, taken refuge within Melly's jurisdiction.¹

The bearer of the astounding news, Dr. Lewis McMillan, was the on-board surgeon for the steamship *Peruvian* recently arrived from Montreal. McMillan had been enlisted as a traveling companion for the fleeing Surratt by a pair of Canadian priests sympathetic to Surratt's current plight and perhaps to his past actions as well.² They, along with other Confederate operatives had been secreting Surratt in Canada since his arrival there following Lincoln's assassination. Introduced to McMillan as Mr. McCarthy, an American who "had compromised himself" during the war and who now wished only to flee the

¹ Henry Wilding to William H. Seward, 27 September 1865, Congress, House, John H. Surratt 39th Cong., 2d sess., 1867, H. R. 9, p. 3. (Hereinafter cited as John H. Surratt, H.R. 9.)

² Trial of John H. Surratt in the Criminal Court for the District of Columbia, Honorable George P. Fisher presiding, (Washington: Government Printing Office, 1867), testimony of Lewis McMillan, 462, 463, 473.

country, Surratt had, by the trans-Atlantic voyage's end, given Dr. McMillan audience to an unexpected outpouring of complicity and culpability. It also became apparent to McMillan that his companion's troubles had not been left in port. Soon after their departure, Surratt confided to the doctor that he feared he was even then being followed. He calmly explained to McMillan while patting his revolver that he would resort to drastic measures, if necessary, to insure his escape. It eventually became clear to McMillan that McCarthy was far more than the mere compromised American he had originally claimed to be. Surratt's careless braggadocio, his naive trust, or his need for unburdening himself led him to divulge aspects both trivial and monumental regarding John Wilkes Booth's Washington cabal. This was followed by disclosures concerning Surratt's own role in the Confederate Secret Service, his part in the abortive 1865 plots to abduct the president, and his alleged activities in New York prior to, during, and immediately after the assassination. Surratt's eventual revelation of his real name probably came as no surprise to McMillan.³

The doctor, no doubt overwhelmed by his new acquaintance's glib revelations, promptly, upon his arrival in Liverpool on 25 September, passed on Surratt's incriminating disclosures along with an extremely detailed physical description of Surratt to Justice of the Peace Melly, who, in turn, on 26 September informed the American Vice-Consul in Liverpool, Henry Wilding, of Surratt's confessions. Though Surratt was not yet in custody, the sense of duty

³ Wilding to Seward, 27 September 1865, John H. Surratt, H. R. 9, p. 3.

and urgency in Wilding's subsequent correspondence to Secretary of State William H. Seward--dated 27 September--is obvious:

. . . [Dr. McMillan] expects a letter or a visit from Surratt in a day or two, and has promised to acquaint me with his, Surratt's, location.

Should there be really anything to [McMillan's report], and a warrant be obtained for Surratt's apprehension, we should scarcely get him delivered up without other evidence than we can obtain here, we should have to ask his remand until you could send us the necessary evidence.⁴

Wilding dutifully sent a copy of the McMillan report to London as well to his overseas superior, Ambassador Charles Francis Adams. It was Adams perhaps--because of his proximity to the problem--who was best suited to make any speculation regarding the possible British response to an American extradition request.

Adams--along with Seward and Wilding--must have been aware of the tenuous dynamics of the unfolding situation. There were at least three variables in the equation. First, there was the Irish nationalist movement and its detrimental effects on Anglo-American relations. Also known as the Fenian movement, it thrived in the heady atmosphere of continued tension between the United States and England. Its "campaign of terror" and armed rebellion was, in fact, designed to "directly and indirectly . . . provoke an Anglo-American rupture."⁵ Incidents involving demands for political asylum, armed insurrection in Canada by Fenians headquartered in the United States, and arrests without warrants of Americans in Ireland "suspected to be in sympathy with the Fenian

⁴ Ibid.

⁵ Brian Jenkins, Fenians and Anglo-American Relations during Reconstruction (Ithaca and London: Cornell University Press, 1969), 24.

movement" strained relations between England and the United States that had not yet resumed a state of diplomatic calm since the end of the American Civil War.⁶

The second and third variables concerned the matter of extradition. Specifically, in order for a representative of a foreign government to make a demand upon the English government for the surrender of a criminal, the petitioner had to be in possession of a charge-specific arrest warrant, have documented evidence of the accused person's criminality, and produce a witness capable of identifying the person in question.⁷ In addition, and most disturbing to the Americans, Article X of the 1846 Webster-Ashburton treaty governing extradition protocol between the United States and Great Britain held no assurance that Surratt's political offense would be recognized as extraditable and, might, in fact, make him eligible for political asylum.⁸

At the time of Wilding's dispatch of 27 September to Seward, however, Wilding hardly had enough documentation on hand to make a concerted application for extradition. Even by 30 September when Wilding had the additional knowledge of Surratt's current whereabouts "at the oratory of the Roman Catholic Church of the Holy Cross," a haven for visiting Catholic clergy

⁶ Martin Duberman, Charles Francis Adams, 1807-1886 (Boston: Houghton Mifflin Company, 1961), 326.

⁷ Thomas H. Dudley to William H. Seward, 6 December 1866, Congress, House, John H. Surratt 39th Cong., 2d sess., 1867, H. R. 25, pp. 17-19. (Hereinafter cited as John Surratt, H. R. 25).

⁸ William M. Mallory, ed., Treaties, Conventions, International Acts, Protocols, and Agreements between United States of America and Other Powers, 1776-1907, (Washington, D.C.: Government Printing Office, 1910), 1: 655-656.

and therefore, he felt, in keeping with Surratt's acknowledged Catholic background, Wilding knew that Surratt was still indeed untouchable. Wilding's closing comment to his follow-up report of 30 September to Secretary of State Seward--"I can, of course, do nothing further in the matter without Mr. [Charles Francis] Adams's instructions and a warrant. If it is Surratt, such a wretch ought not to escape"--not only epitomizes his sense of mission, but also reiterates his perception of the need for expeditious response.⁹

While waiting for a directive from the home office, Wilding sent one final dispatch to Seward on 10 October. He reported that he had just received instructions from Mr. Adams in London cautioning him that he "did not consider it advisable, with our present evidence of identity and complicity, to apply for a warrant for the arrest of the supposed Surratt." As a postscript and perhaps as a reminder to Seward of the alleged volatile, unrepentant, and dangerous nature of the suspect, Wilding now included a threat allegedly made by Surratt and not mentioned in Wilding's previous correspondence stating that it was Surratt's desire "that he would live long enough to give a good account to Mr. [Andrew] Johnson."¹⁰ Due in no small part to the often painfully slow intercontinental communication system then in use and despite Wilding's prompt efforts, he was now forced to adopt a prolonged attitude of anxious hand-sitting while he waited for directives from the home office.

Acting Secretary of State William Hunter, in the absence of both William

⁹ Wilding to Seward, 30 September 1865, John H. Surratt, H. R. 9, p. 4.

¹⁰ Wilding to Seward, 10 October 1865, John H. Surratt, H. R. 9, p. 4.

H. Seward and the Assistant Secretary of State Frederick W. Seward provided Wilding with written instructions. His name clearly appeared on the 13 October dispatch sent to Wilding instructing him that "upon a consultation with the Secretary of War [Edwin M. Stanton] and the Judge Advocate General [Joseph Holt], it is thought advisable that no action be taken in regard to the arrest of the supposed John Surratt at present."¹¹ Unfortunately for Hunter, when questioned by the 1867 House Judiciary Committee investigating the initial handling of the Surratt case, he could only recall receiving Stanton's and Holt's "oral opinion[s]" regarding the disposition of Surratt, and, those, only indirectly from a departmental messenger. He could not produce any written documentation on the matter. Neither could he deny, when attempting to justify his department's actions by citing unsuccessful precedents by the United States government to extradite criminals from English territory, that the assassination of the President of the United States was, in fact, a different and far more serious matter than the extradition of the pirates that he had offered in evidence. His final attempt to dodge ultimate culpability took the same form as the tactic later employed by several of his fellow executive branch officials--denying that he had the authority to act in such situations. Specifically, Hunter stated to the Judiciary Committee that "all the law questions relating to these matters were canvassed at the Bureau of Military Justice (Holt's bailiwick) and the State Department considered itself

¹¹ William Hunter to Wilding, 13 October 1865, John H. Surratt, H. R. 9, p. 5.

governed by what might be decided on there."¹² Holt (and Stanton as well), however, seemed exonerated by Hunter's own lack of documentation and the State Department took all the blame for this first encounter with the fugitive Surratt. As the lowest ranking official to explain the subsequent disposition of the Wilding reports to the House Judiciary Committee, Acting Secretary Hunter may have been the duly-assigned scapegoat.

The State Department, it would appear by this as well as by its subsequent action, was totally prepared for an expediency such as the McMillan testimony and had quite specific exigency plans in hand. As the dust began to settle from this first skirmish with its eager overseas operatives, another diplomatic quandary, a pair of communiqués from John F. Potter, Consul-General in Montreal, dated 25 and 27 October, gave the State Department yet another ball to juggle and another paper trail to cover. The first dispatch called attention to the fact that State Department officials in Montreal had known of Surratt's departure for Europe "some time in September," knew that Surratt was awaiting funds "from parties in this city by the hand of McMillan of whom Surratt made a confidante in Liverpool," and that Surratt intended at some point to go to Rome.¹³ Here again was information that, if properly and expeditiously acted upon, might result in Surratt's timely apprehension.

Potter's second dispatch of two days later, largely reiterative of the facts first disclosed in Wilding's earlier correspondence, included the specifics of a

¹² Ibid.

¹³ John F. Potter to Seward, 25 October 1865, John H. Surratt, H. R. 9, p. 5.

meeting Potter had just completed with McMillan in Quebec, a meeting arranged for by Potter when no response was immediately forthcoming from Seward.

McMillan told Potter about his introduction to Surratt prior to the *Peruvian's* departure "by a person with whom he was acquainted"; he listed and in some cases named the persons who secreted Surratt in Canada; and he detailed Surratt's amateurish attempt to disguise his appearance with hair dye, facial stain, and eyeglasses. In addition and apparently without fear of recrimination, McMillan identified himself as the bearer of funds to Surratt in England from an unnamed source in Washington, D.C. The Andrew Johnson threat mentioned somewhat incompletely in Wilding's 10 October dispatch was now chillingly expanded to suggest that ". . . [Surratt] only desired to live two years longer, in which time he would serve President Johnson as Booth did Mr. Lincoln. . . ." Closing, Potter could not disguise his excitement and concern that an opportunity was offering itself for the American government to send an officer to Liverpool on the same ship with McMillan to secure Surratt's arrest and forestall his expressed intention to flee to Rome.¹⁴

Frederick W. Seward, Assistant Secretary of State, received the first of Potter's dispatches on 26 October and assured Potter rather succinctly and belatedly on 11 November that the matter "[had] been properly availed of."¹⁵ To the senior Seward's credit, an indictment was requested on 13 November of James

¹⁴ Potter to Seward, 27 October 1865, John H. Surratt, H. R. 9, p. 5-6.

¹⁵ Frederick W. Seward to Potter, 11 November 1865, John H. Surratt, H. R. 9, p. 6.

Speed, the Attorney General of the United States, in response to the Potter report. Subsequent irregularities by Secretary of War Edwin M. Stanton, Secretary of State Seward, and Judge Advocate General Joseph Holt, however, far outweigh this one very regular procedure.

Stanton, in a side-stepping disclosure to the House Committee on the Judiciary, did not deny having information concerning Surratt's supposed whereabouts or deny employing persons to establish his whereabouts outside the United States, but asserted that any arrest made in a foreign country--as Surratt's would certainly be--was clearly outside the jurisdiction of his War Department. In tangential matters, he also claimed that his controversial November 1865 revocation of the 20 April 1865 reward for Surratt's (and others') arrest was justified for three reasons: one, the lack of any recent response to the reward offer; two, the assumption that any remaining fugitives must surely be out of the country where their arrest would be made at the hands of officials of the American government who "ought not to have any pretense of claiming the reward"; and, three, dropping the reward offer might serve as a ruse to entice Surratt into the open by creating a false sense of security to which he might fall prey.¹⁶ None of these assertions bears the telling, however, when held up to the fact that the reward had been dropped after both the Wilding and Potter reports had been duly received by the State Department.

Seward, under questioning by the same committee, admitted that

¹⁶ Edwin M. Stanton testimony to Committee on the Judiciary, 10 January 1867, Congress, House, John H. Surratt, 39th Cong., 2d sess., 1969, H. R. 33, p. 3. (Hereinafter cited as John H. Surratt, H. R. 33.)

significant documents regarding Surratt's case had been temporarily misplaced and that despite Potter's specific request and the reassuring note to Potter that his disclosures "had been availed of," no agent was ever sent to Liverpool because, as Steward explained, "a pursuit might reveal itself without the end sought being obtained."¹⁷ Seward seemed comfortable knowing where Surratt was but rather uncomfortable doing anything about it.

Judge Advocate General Joseph Holt, defending his rather peculiar actions to the same Judiciary Committee, claimed that contrary to the testimony of Acting Secretary of State William Hunter, no consultation regarding the securing an indictment against Surratt had ever been discussed in his presence. He further asserted that despite being made aware, by Hunter, of Justice of the Peace Melly's disclosure regarding Surratt, he was not aware that any official action on his part was being sought. Finally, without dropping any names, Holt purported that it was a generally held opinion among federal officials that "if any formal demand had been made upon the English government for Surratt, that government would have followed its precedents--treated the assassination of the President as a political offense, and would have refused to deliver him up."¹⁸ Holt was definitely not going to let the blame come to rest in his lap. He made it clear that his advice was there for the asking, but added the disclaimer that he "did not regard it as at all within the scope of my official authority either to urge the demand for

¹⁷ Senate testimony to Committee on the Judiciary, 10 January 1867, John H. Surratt, H. R. 33, p. 6.

¹⁸ Ibid., Holt testimony to Committee on the Judiciary, 10 January 1867, p. 10.

Surratt or not to urge it I supposed [that power] belonged to another department of the government."¹⁹

With the testimony of Stanton, Seward, Holt, and Hunter, the matter of blame had gone full circle and--not surprisingly--no substantive action had ever been taken. No officer of the United States government was ever sent to Liverpool to arrest Surratt; no detective of the United States government was ever sent to Liverpool to determine his movements, and, most damning to those implicated, no notification of Surratt's intention to go to Rome was ever sent to the American minister there.²⁰

On the other side of the Atlantic and unaware of the maneuvering caused by his initial dispatch, one can only imagine Wilding's disappointment as he read Hunter's stifling directive and felt Surratt--along with some degree of international notoriety for himself--slip through his grasp. Judging from the above inconsistencies, it is no wonder that Surratt admitted to have gotten the impression--if not the actual word--that the American authorities "did not want me in the United States." They were, he continued, "willing and anxious for me to remain abroad, and hoped I would continue to do so."²¹ He cites the impunity with which he played his cat-and-mouse game with the American consuls in London, Liverpool, and Birmingham as evidence of the American government's

¹⁹ Ibid.

²⁰ Ibid., report by F. E. Woodbridge, Committee on the Judiciary, 2 March 1867, pp. 1-2.

²¹ Risvold, Weichmann, 221.

desire to let him fall through any convenient or available diplomatic cracks.²²

In any estimation, the response of the State Department to the knowledge not only of John Surratt's whereabouts in Great Britain but also of his intentions while there appear to be extremely tentative, perhaps lackadaisical, even bewildered. It may be argued using the same evidence, however, that these actions were an attempt to keep John Surratt at bay until the problem somehow took care of itself. While later exonerated (in March 1867) by the House Committee on the Judiciary of any "improper motives" in its response, the State Department nevertheless was stigmatized by the Judiciary committee's assertion that during this period of first contact with the accused, "due diligence in the arrest of John H. Surratt was not exercised by the executive department of the government."²³ Whether one sees these early actions by the State Department as careless and inadvertent lapses in protocol, as uncharacteristic reluctance and defeatism, or as carefully choreographed obstruction, the result was the same--aiding and abetting Surratt's ability to remain at large.

Surratt, meanwhile, on 12 October, now travelling as John Watson of Edinburgh, applied for a passport "over the signature of a banking institution in London . . . [which] included some of the most notorious rebel sympathizers in England."²⁴ Issued a passport the following day in preparation for his sojourn to

²² Ibid., 446.

²³ John H. Surratt, H. R. 33, report of Woodbridge of the Committee on the Judiciary, 2 March 1867, p. 2.

²⁴ Report of George H. Sharpe to the Committee on the Judiciary, 19 December 1867, Congress, House, Assassination of President Lincoln, 40th Cong.,

the Papal States, Surratt thereafter sailed to Paris where the "nuncio's vise [sic] [was] given gratis."²⁵ The granting of this favor, considered out of the ordinary by State Department investigators scouring the continent in 1866 for evidence of European complicity, was apparently a deliberate circumvention by the nuncio who was so flattered by Surratt's plans to enter the Papal Guard that he sidestepped standard operating procedure. So it was that Surratt, relying again on the auspices of the Catholic Church, fell from sight, this time for a period of over six months. One cannot, as one historian suggests, discount the role of the State Department in this disappearance. Following what one historian described as "two months of meaningless correspondence with its representative in England," he claims that "the State Department permitted Surratt to lose himself on the continent."²⁶

Surratt's resurfacing months later was every bit as sudden and as unexpected as his first appearance. Again the home office of the State Department suffered chastisement for its irregularities while again the prompt behavior of its consuls appeared above reproach. What clearly marks this second phase of Surratt's flight is its touch of burlesque tragicomedy, its undercurrent of irony and its overwhelming oxymoronic sense of choreographed error.

General Rufus King, former Civil War field commander and, subsequently,

2d sess., 1867, H. R. 68, p. 2. (Hereinafter cited as Assassination, H. R. 68).

²⁵ Ibid.

²⁶ William Hanchett, The Lincoln Murder Conspiracies (Urbana and Chicago: University of Illinois Press, 1983), 76-77.

United States Minister to Rome, earned--quite serendipitously--the laurels for reestablishing Surratt's whereabouts. On 21 April 1866 Henri Beaumont de Ste. Marie, a private in the third company of the Papal Guard, attested to King that his erstwhile college friend from Maryland, John Harrison Surratt (alias John Watson), had recently joined his zouave company stationed at Sezze near Rome. King's prompt report to William H. Seward of 23 April was alarming in its revelation and uncanny in its resemblance to both the content and tone of Wilding's initial communiqué to Seward seven months before. Surratt, according to Ste. Marie, unburdened himself to him, and--as he had done with McMillan--acknowledged his participation in the Lincoln conspiracy. If one may judge the additional details that Surratt revealed to Ste. Marie as an assessment of Surratt's level of trust and intimacy with Ste. Marie, then theirs must have been a strong friendship indeed. Never mentioned in the discussions with McMillan concerning the Lincoln assassination, these conversations introduced a trail of ultimate responsibility leading to Confederate President Jefferson Davis and revealed the existence of anonymous financial backers for Surratt. King, whether overcome by his own patriotic duty or with Ste. Marie's earnestness, "could not," in his own words, "very well doubt the truth of what he told me."²⁷ A customary request for instructions closed King's startling report.

²⁷ Rufus King to Seward, 23 April 1866, U. S. Department of State, Papers Relation to the Foreign Relations of the United States (Washington, D. C.: Government Printing Office, 1861-1866), 2: 129. (Hereinafter cited as FRUS with year and volume number.) Note: Many of the following dispatches may also be found in Leo Stock, ed., United States Ministers to the Papal States: Instructions and Dispatches 1848-1868, 2 vols. (Washington, D. C.: Catholic University Press, 1933) and in H. R. 9 and H. R. 25 already cited.

By 11 May, six days before King's first dispatch was placed on William H. Seward's desk, King was filing a second one, this one complete with two enclosures in Ste. Marie's hand. At once urgent, melodramatic, even maudlin, these enclosures nevertheless demanded the State Department's immediate attention. Ste. Marie advised the utmost speed, lest his zouave company be moved into the mountains as was then rumored; he cautioned against corroborative overkill ("It is lost time to acquire further proofs."); and, he cleverly tempered what might have been construed as a touch of blackmail on his part--a request for sufficient funds to purchase his release from Papal service--with just enough foreboding concerning his now jeopardized position among the members of his company to soften the conscience and loosen the purse strings of the most dubious or frugal State Department official.²⁸ Ste. Marie's second note, dated 7 May, while nearly devoid of substance regarding Surratt's status, is, nevertheless, significant as a case study of the author's character. Who but what one historian has labeled "a Canadian reward seeker"²⁹ would, at this late date, offer an unabashedly belated note of condolence to the memory of President Lincoln?³⁰ Similarly, who but someone with an ulterior motive would close his brief letter with "I long to revisit my native land and the grey hair of my father and mother, and wish to make of the United States my last and permanent home."³¹ Ste.

²⁸ King to Seward, 11 May 1866, FRUS, 1866, 2: 129.

²⁹ Hanchett, The Lincoln Murder Conspiracies, 86.

³⁰ Henri Beaumont de Ste. Marie to Rufus King, 7 May 1866, FRUS, 1866, 2: 130.

³¹ *Ibid.*

Marie, disguising his intentions with glaringly trite sentimentality and exaggerating the uncertainty of his personal safety with cloak-and-dagger innuendo, was no one's fool.

The State Department--fortunately for Surratt--again appeared to have made contingency plans for his possible reappearance. For a few days following 17 May when Assistant Secretary of State Frederick W. Seward was first apprised of the situation via the receipt of the King dispatch of 23 April, little more substantive activity took place than the exchange of interdepartmental correspondence among Seward, Stanton, and Judge Advocate Holt concerning Surratt's reemergence, and the making of minor corrections in the names of the developing situation's principals. Oddly enough, it was Ste. Marie's identity rather than his credibility that was seriously questioned. Holt, most significantly and most succinctly, thought that if the informant's identity could once be established, "that it can be shown here that he is a man of choice and entitled to credit in his statements."³² To that end, communiqués up to and including those of 24 May provided King--via Holt, Stanton, and Seward--with Ste. Marie's physical and biographical details and demanded, in turn, of Ste. Marie that he practically fill out an application for the role of informant, listing full name, former places of residence, and a list of references.³³ Government priorities thus placed the establishment of Ste. Marie's identity over the establishment of his credibility.

³² Judge Advocate Joseph Holt to Stanton, 19 May 1866, John H. Surratt, H. R. 9, p. 10.

³³ Holt to Seward, 22 May 1866, John H. Surratt, H. R. 9, p. 10.

Bureaucracy was, indeed, at times, the fleeing Surratt's most dependable accomplice.

It was not until a 28 May dispatch from William Seward to Stanton that any documented reference was made to the intricacies of and potential problems with securing Surratt's return to the United States for trial. Seward, in the best fashion of brash nineteenth century American diplomacy, explained that

as we have no treaty of extradition with the Papal government, it is proposed that a special agent be sent to Rome to demand the surrender of Surratt, should he be fully identified as the individual referred to by Ste. Marie, of which there would seem to be little doubt.³⁴

In one strategic, albeit tactless, move, it seemed, Seward planned to quickly close the door on the nagging Surratt situation. As a counterpoint to this very aggressive action, Seward, on 25 May, again fell prey to his paranoia concerning Surratt and officially denied any knowledge of Surratt's activities to Chairman James F. Wilson of the House Judiciary Committee that was then rooting out information that might "implicate any person other than those already tried, in complicity with the assassination."³⁵ Seward rationalized that to publicize blithely the State Department's investigation "might tend to defeat our wish to arrest Surratt for the purpose of bringing him to this country to be tried."³⁶ The above efforts delineate, unfortunately, the high water mark in the efficient

³⁴ Seward to Stanton, 28 May 1866, John H. Surratt, H. R. 9, p. 12.

³⁵ Seward to James F. Wilson, 25 May 1866, John H. Surratt, H. R. 9, p. 11. In a confidential note to Wilson of the same date (p. 11). Seward in fact acknowledged that his office was in possession of papers relevant to Surratt.

³⁶ Ibid.

implementation of Seward's executive powers. Hereafter, as during the Liverpool scenario, the State Department's activities became bogged down in paper-shuffling and the idiosyncrasies of transatlantic communication in the mid-nineteenth century.

The months of June and July 1866 were characterized by lost or misdirected dispatches from Seward to King which temporarily left the latter in the dark as to the State Department's intentions, and by continued and increasingly stringent demands from Judge Advocate Holt to identify satisfactorily Ste. Marie. King's replies to Seward of 19 and 23 June leave no doubt of his confidence in Ste. Marie's identity or in his testimony:

Ste. Marie answers exactly to the description given of him in Judge Holt's letter, and is no doubt the same person . . . I requested him to describe Surratt to me, which he did; and it corresponded exactly with the description of the witness [Louis] Weichmann at the trial of the conspirators.³⁷

Ste. Marie, unwillingly to await passively his fate at the hands of the State Department, was simultaneously clarifying his testimony, increasing his perceived value as a witness, and bargaining for his release to a civilian life free from the present threat of reprisals from what King dubbed "[Surratt's] wild zouave comrades."³⁸ The details of Ste. Marie's 21 June letter to King--the contents of which were then passed along to Seward--seem to satisfy all the particulars regarding personal history initially required of him by the State Department. In addition, and perhaps genuinely interested in seeing Surratt brought to justice or

³⁷ King to Seward, 19 June 1866, FRUS, 1866, 2: 133.

³⁸ King to Seward, 14 July 1866, FRUS, 1866, 2: 136.

in seeing no more time wasted in verifying his identity, Ste. Marie made yet another series of disclosures regarding Surratt. He disclosed matters concerning his former acquaintance with both Surratt and Weichmann while he was teaching in Maryland. He included his self-deprecating appraisal of himself as a soldier. He further indicted Surratt, labelling him "the instigator of the murder . . . [who] acted in the instructions and orders of persons he did not name, but some of whom are in New York, and others in London." Finally and without any tact whatsoever, he reminded King--and indirectly Seward--of his previous unappreciated and perhaps ignored 1865 deposition that he had made to Potter concerning the Surratt-Weichmann connection.³⁹ Even a self-disclosure by Ste. Marie that during the American Civil War he had had prior experience as an informer, having turned on his fellow prisoners at Castle Thunder in Richmond, and that ". . . as a result of my services got my liberty," did not deter King from trusting in the usefulness and the dependability of Ste. Marie's testimony.⁴⁰ One wonders if even King, who seems otherwise above reproach, saw in the emerging Surratt situation a chance for recognition if not promotion and let this very real possibility bias his judgment of his prize informant.

Ste. Marie's 10 July affidavit, enclosed in King's 14 July report to Seward reveals considerable evidence of still further discussion with Surratt. Ste. Marie had, in fact, felt as though he had pushed his inquisitiveness with Surratt to the

³⁹ King to Seward, 19 June 1866, FRUS, 1866, 2:133. This deposition contained Ste. Marie's suspicion that both Weichmann and Surratt were involved in treasonous activities.

⁴⁰ Ste. Marie to King, 21 June 1866, John H. Surratt, H. R. 9, p. 13.

limit. "More I could not learn," he closed his sworn statement to Seward, "being afraid to awaken his suspicions."⁴¹ He had now elicited from Surratt information disclosing certain particulars of the assassination and the logistics of his own escape to Europe. He also made disclosures that would, upon the War Department's viewing of them, rekindle the idea of a murder conspiracy engineered by the Confederate hierarchy, a pet theory of Secretary of War Stanton, who was unflatteringly described later as someone who "saw, heard, felt, and cherished every thing that favored [a Confederate conspiracy] . . . [and] . . . would see nothing, would hear nothing, and hated every thing, that in the slightest degree mitigated against it."⁴² Ste. Marie now revealed that Surratt was "protected by the clergy, and that the murder [was] the result of a deep-laid plot, not only against the life of President Lincoln, but against the existence of the republic, as we are aware that priesthood and royalty are and always have been opposed to liberty."⁴³

Even Surratt's alleged poignant and vengeful exclamation to Ste. Marie "Damn the Yankees; they have killed my mother, but I have done them as much harm as I could, we have killed Lincoln, the nigger's [sic] friend" was, in itself worth the small price that Ste. Marie demanded for it.⁴⁴ He still, at this point, was prepared to testify in person in Washington, explained King, "only asking to

⁴¹ King to Seward, 14 July 1866, FRUS, 1866, 2: 136.

⁴² DeWitt, Judicial Murder, 6.

⁴³ King to Seward, 14 July 1866, FRUS, 1866, 2:136. (Enclosure by Ste. Marie of 10 July).

⁴⁴ *Ibid.*

have his expenses paid and some compensation made for his time and trouble."⁴⁵ King, always willing to plead for Ste. Marie's cause, argued in a 14 July private memo to Seward that "it would be neither difficult nor expensive to procure his discharge from the zouaves, [and] ship him . . . to New York, always providing that his presence and evidence are wanted in Washington."⁴⁶ It is not apparent from the above comment whether at this point King suspected a possible alternative State Department agenda regarding the disposition of Ste. Marie and Surratt. If King required further evidence to substantiate his suspicions, however, it would not be long forthcoming.

Using the State Department's response to the collective Ste. Marie disclosures as a barometer, perhaps the most significant revelations that Surratt had made to Ste. Marie were, one, that Louis Weichmann--lodger at the Surratt boardinghouse, erstwhile suspect in the conspiracy, and eventual star witness of the trial of the conspirators--had, while in the employ of the War Department, transmitted information to the Confederate government in Richmond, and two, that Surratt was in New York--not Washington, D.C.--on the day of the Lincoln assassination. As Helen Jones Campbell summarizes this complication in Confederate Courier:

The last thing [the War Department] wanted now was evidence that Weichmann, who would of course be the government's star witness against

⁴⁵ King to Seward, 14 July 1866, FRUS, 1866, 2: 136. See Congress, House, H. B. Sainte-Marie 40th Cong., 2d. sess., 1867, H. R. 36, pp. 2-4 for Ste. Marie's 11 October 1867 application for a portion of the original reward. He eventually received \$15,000 for his efforts.

⁴⁶ King to Seward, 14 July 1866, FRUS, 1866, 2: 136.

Surratt, . . . had participated in [Surratt's] missions to the south. Certainly it did not want a statement that [Surratt] had been 'in New York . . . prepared to fly as soon as the deed was done.' The government needed him at the scene of the crime.⁴⁷

These final disclosures and a thorough understanding of their ramifications must have prompted the State Department, in conjunction with the War Department, to keep Surratt at bay. His arrest and extradition--and the testimony certain to result from his trial--would call into question the source of the allegations which sent Mary Surratt to her death, would damage beyond repair the veracity of a key person slated to again assume the role of witness for the prosecution, and would physically place Surratt at such a distance from the scene of the crime that no murder indictment could reach him.

For Rufus King, August ushered in an unexpected diplomatic coup. Cardinal Giacomo Antonelli, the Vatican Secretary of State, in an interview with King on 8 August, intimated that "if the American government desired the surrender of the criminal [Surratt] there would probably be no difficulty in the way."⁴⁸ He further intimated that Ste. Marie would be granted his discharge in order that he might serve as a witness in the eventual trial. King must have

⁴⁷ Helen Jones Campbell, Confederate Courier (New York: St. Martin's Press, 1964), 127.

⁴⁸ King to Seward, 8 August 1866, FRUS, 1866, 2:139. See Welles, Diary, 2: 638, for an 11 December 1866 cabinet level debate considering both the advisability and the feasibility of granting the Pope asylum in the United States if the war with the Garibaldini worsened. Whether Surratt's extradition was regarded by the Pope as the initial phase of a *quid pro quo* exchange is, however, not clear. See also S. William Halperin, Italy and the Vatican at War (New York: Greenwood Press Publishers, 1868), xi-xiii for an overview of the diplomatic efforts by the Papacy to maintain the integrity of its crumbling empire during the period of Italian unification.

revelled in the thought of both criminal and informant bound for America due to his diligence and with few if any major complications. Ste. Marie, perhaps with a more realistic assessment of the present situation and its future implications, felt moved to remark to one of King's aides that "too little notice has been taken of [my] statements about Surratt."⁴⁹ When held up to the light of the next two months' behavior by the State Department this comment seems remarkably understated. Ste. Marie, like King before him, may have begun to sense that it was not in spite of his revelations but because of them that the American State Department officials seemed governed by inertia.

It would be convenient to explain the communications lapse dating from King's encouraging memoranda of 8 August to Seward's tardy replay on 16 October with a discourse on the limitations of contemporaneous transoceanic communication, but that would not account for the entire 57 day doldrum that actually occurred. Indeed, during the 1867 House Committee on the Judiciary investigation previously cited, several embarrassing irregularities came to the surface regarding this belated response. First and foremost was Seward's absence from Washington. Not only was his participation in a month long trip "for the west" beginning on 28 August considered untimely in and of itself, but it was done with full knowledge of the Antonelli agenda that had been received and routinely forwarded to Stanton by Seward the day before he departed.⁵⁰ Seward later

⁴⁹ King to Seward, 23 September 1866, John H. Surratt, H. R. 33, p. 8.

⁵⁰ Seward testimony to Committee on the Judiciary, 21 January 1867, John H. Surratt, H. R. 33, p. 7. For more on the reluctance, suspicion, and negativity regarding the politically-motivated "Swing Around the Circle," see Welles, Diary,

denied having ever seen the Antonelli proposal of 8 August before leaving Washington as the "master of arrangements" for President Johnson's "Swing Around the Circle" whistle-stop tour aimed at drumming up Western support for Johnson's Reconstruction plan.⁵¹ In addition, he stated that as a matter of routine and efficient protocol

whenever I left the department, it was always with instructions to whatever person I left in charge behind me to follow up the investigation about Surratt, and to confer, whenever information was received, with the Secretary of War or the Attorney General, as the case might be; therefore nothing could have been left undone that ought to have been done in relation to it.⁵²

Contrasting Seward's flattering self-portrait of departmental protocol, Second Assistant Secretary William Hunter would testify to the committee that he had been given "no special orders" by the departing Seward "to give attention to the matter of the arrest of Surratt."⁵³ He further asserted that despite the offer by Cardinal Antonelli to surrender Surratt unconditionally, it was the general impression in the State Department that "[the State Department] was in doubt as to whether they would make the application [for extradition] at all, as it might form an inconvenient precedent" to which the United States would--in a gesture of

2: 587, Glyndon Van Deusen, William Henry Seward (New York: Oxford University Press, 1967), 460 and John M. Taylor William Henry Seward: Lincoln's Right Hand (New York: Harper Collins Publishers, 1991), 264-265.

⁵¹ Seward testimony to Committee on the Judiciary, 21 January 1867, John H. Surratt, H. R. 33, p. 7.

⁵² Ibid.

⁵³ Hunter testimony to Committee on the Judiciary, 4-5 February 1867, John H. Surratt, H. R. 33, pp. 10-11.

reciprocity at some future point in time--have to adhere.⁵⁴

As a final revelation of departmental expedience and selective memory, Seward, in his testimony, could not recall whether or not he had relayed the Wilding and Potter papers to President Johnson. He deemed them "matters of routine, not requiring special direction" and explained that if they had been important enough they would have been brought up "if a convenient opportunity offered, [for instance] in a cabinet meeting."⁵⁵ Clearly, questions regarding ultimate accountability and lack of initiative were paramount to the Judiciary Committee. Paramount to General King, by comparison, was the nearly two month period during which the State Department went incommunicado and how the resultant loss of direction affected his ongoing diplomacy with the Papal States.

Ste. Marie, meanwhile, it would seem, was beside himself with feelings of unimportance and frustration. In a 12 September note to J. C. Hooker, Acting Secretary of the Legation at Rome, he again provided evidence of further disclosures by Surratt this time pinpointing the source of the assassination plot within the Confederate high command. As Ste. Marie remembered the conversation, Surratt had told him that "the matter was debated in the rebel Cabinet and [Booth and Surratt] were told to act as they thought the best to accomplish their design and money was furnished them." Surratt now admitted

⁵⁴ Ibid.

⁵⁵ Seward testimony to Committee on the Judiciary, 21 January 1867, John H. Surratt, H. R. 33, p. 7.

that he had been, in fact, "in Washington till all was prepared for the deed," then fled to Canada via New York. Nor was Surratt planning to stay long in the service of the Pope according to Ste. Marie. Two more months and he would be off for the East Indies and eventually return to the United States "in disguise in three or four more years."⁵⁶ His revelations finished, Ste. Marie completed his last paragraph with undisguised disgust, indignation and impatience.

You may make use if you think proper of this statement of [Surratt's], although it appears the Washington Cabinet seems very indifferent on this important matter. I shall remain here in Velletri till I get from you or General King a decided answer that the whole affair is drop[p]ed to nothing, strange as it may appear I know some papers in New York and Philadelphia who if the[y] were in possession of this information would force the government to act upon it in justice to the memory to P[resident] Lincoln.⁵⁷

Seward, by 10 October, seems to have regained a firm grip on the situation. Whether as a result of the recuperative effects of a month of rest and relaxation following his bout with the cholera he had contracted while accompanying President Johnson on his tour of the west, or of an intense analysis and reevaluation of the developing crisis, or of a sudden awareness of the possibility of a Ste. Marie leak to the press (or a combination of the three), Seward was now prepared to take control. His confidential communiqué to King of that date was explicit, authoritative, and wide-ranging. He thought it critical that King address the following: first, employ a confidential person other than Ste. Marie to "ascertain by comparison with the photograph herewith sent, whether the person

⁵⁶ Ste. Marie to J. C. Hooker, 12 September 1866, Stock, Papal States, 382.

⁵⁷ Ibid.

indicated by Ste. Marie is really John Surratt"; second, pay Ste. Marie "in consideration of the information he has already communicated on the subject"; third, determine whether the cardinal's offer "to deliver John H. Surratt upon an authentic indictment, and at the request of this department" was still in effect or, that failing, whether the Pope would enter into an extradition treaty with the United States; and fourth, secure a guarantee that "neither Ste. Marie nor Surratt be discharged from the guards until we shall have had time to communicate concerning them after receiving a prompt reply to this communication from you." Ste. Marie was, in addition, to be informed confidentially that his appeal for relocation to Canada to be with his mother was "under consideration" by the State Department.⁵⁸

Seward closed this dispatch with a postscript explaining that the photograph of Surratt mentioned in his first instruction would not be sent until the next mailing. At first glance the delay seems a minor setback and, one which Seward seemed eager to quickly resolve, but in light of the events of the next month, this omission had far-reaching ramifications and again adds to the emerging picture of obstruction and private agendas.

King, upon receiving the above dispatch, promptly set about to carry out its specifications. Within a day or two, King had spoken with Cardinal Antonelli who asserted that Surratt would be delivered to King upon the presentation of proper documentation. The cardinal's anxiety in making this decision, stemming entirely from the Papal government's stand against capital punishment, was held in check,

⁵⁸ Seward to King, 16 October 1866, FRUS, 1866, 2:129-140.

sensed King, largely because of the heinous nature of the crime of which Surratt was accused and because the cardinal felt--as the State Department had in fact earlier concluded--that "under parallel circumstances [the United States] would do as they desired to be done by."⁵⁹ King also secured a promise from Antonelli that he would have the Papal minister of war take under his advisement the request that Surratt and Ste. Marie not be discharged pending further communication from Washington. As to the other two directives, King informed Seward that he would see to it that Ste. Marie was paid for his past efforts and that, in addition, he would like to "hold out to him the hope of some further remuneration, should Surratt be identified and surrendered."⁶⁰ Tragically, King's final directive, the identification of Surratt, would have to be deferred until a later date. The photograph promised by Seward in his 16 October dispatch would not arrive until 12 November.

King's private correspondence of 3 November to Seward demonstrated King's eye for detail, his foresight, his empathy for Ste. Marie, and his confidence that all was proceeding as planned. Regarding Surratt's fate, he mused:

How is he to be sent to America? Cannot one of our ships of war now in the Mediterranean be directed to come to Civita Vecchia, receive Surratt and Ste. Marie on board, and convey them to the United States? Would it not be well to ask also for Ste. Marie's discharge . . .? Am I to draw directly on the department, or on Baring Brothers for the sum paid St. [sic] Marie and the expense of sending a person to identify Surratt?⁶¹

⁵⁹ King to Seward, 2 November 1866, FRUS, 1866, 2:140-141.

⁶⁰ Ibid.

⁶¹ King to Seward, 3 November 1866, FRUS, 1866, 2: 141.

Before Seward could officially respond to these matters, however, events took place that negated their implementation.

Apparently acting entirely without the sanction or the foreknowledge of the American authorities, Cardinal Antonelli authorized the arrest of Surratt on 6 November. As King came to understand the developments

the arrest was made with the approval of his Holiness, and in anticipation of any application from the State Department, as well as for the purpose of placing Surratt in safe custody, as with the view to show the disposition of the Papal government to comply with the expected request of American authorities.⁶²

This authorization worked its way down the Papal chain of command and its final terse manifestation to Lieutenant Colonel Allet, commanding the Zouave Battalion at Velletri, a post twenty miles southeast of Rome, left no room for interpretation: "Cause the arrest of the Zouave Watson, and have him conducted, under secure escort to the military prison at Rome. It is of much importance that this order be executed with exactness."⁶³ Surratt, meanwhile, as a later report from Allet shows, had been expecting trouble, "having obtained knowledge of a letter addressed to Zouave Ste. Marie which concerned him probably. This letter, sent by mistake to a trumpeter named Sault Marie, was opened by him and shown to Watson (Surratt) because it was written in English."⁶⁴ So, innocently it would seem, Surratt was presented with what must have been King's instructions for Ste. Marie that had been mistakenly given to another similarly named zouave who, in

⁶² King to Seward, 19 November 1866, FRUS, 1866, 2: 143-144.

⁶³ Kanzler to Allet, 6 November 1866, FRUS, 1866, 2:142.

⁶⁴ Allet to Papal Minister of War, 9 November 1866, FRUS, 1866, 2:144.

turn, enlisted Surratt as translator. This may explain why Surratt was not on detachment where Allet expected him to be but rather on leave in Feroli.⁶⁵ If Surratt experienced any uneasiness as a result of intercepting this correspondence obviously not meant for his eyes, his anxiety may --at about that time--have been compounded by a wavering conscience. Whether motivated by the desire to posthumously clear his mother's name or to bring his private purgatory to some kind of an end, he was driven to extreme measures. In an 1870 post-trial interview granted to a *Washington Post* reporter Surratt attested that:

while in the service of Pius IX . . . I wrote to one of the most prominent Union statesmen . . . telling him who I was and where I was, and asking him if it would be safe for me to return to the United States and if I could get a jury trial and not undergo a drumhead court martial. He wrote back saying that, in his opinion, I could not get a jury trial and advising me to remain away from America at least three years I determined, however, to return and to take my chances of a court martial and was on the point of doing so when I was arrested at the instance of Pope Pius IX and cast into prison.⁶⁶

Suffice it to say that the actions of Cardinal Antonelli all but shattered any dreams Surratt may have had of voluntary martyrdom.

Surratt's arrest, if one may judge from the subsequent reports, was considered a rather routine and matter-of-fact affair. Lieutenant Colonel Allet, Surratt's immediate commander and the bottom rung in the hierarchy of the local Papal Guard, had the distinction of being able to tell the Papal minister of war, "I have the honor to inform you that the zouave John Watson has been arrested at

⁶⁵ De Lambilly to Allet, 8 November 1866, *FRUS*, 1866, 2: 145.

⁶⁶ Risvold, *Weichmann*, 446.

Veroli, and will be taken tomorrow morning under good escort to Rome."⁶⁷ The night of 7 November passed with the suspect detained in the battalion prison, incommunicado and under heavy guard. All that remained, it would seem, was the routine transfer of the accused to Rome.

At four o'clock in the morning on 8 November Surratt, whether indifferent to or confident in his fate, prepared for his transfer, in the words of one of the officers present, "with a calmness and phlegm quite English."⁶⁸ Outside and under the close scrutiny of six armed guards Surratt begged permission to halt at the barracks privies when, in a vault that Allet assured his superiors "savor[ed] of a prodigy," he leaped over a balustrade and fell twenty or more feet onto a ledge. "[There] the filth from the barracks accumulated . . . and in this manner the fall of Watson was broken."⁶⁹ Surratt, by contrast, minimized Allet's suggestions of athletic prowess or Providence. He claimed that "many and many a time my comrades and myself, in hours of idleness, would lean over that precipice It was an open question as to whether a man could jump from the wall and land

⁶⁷ Allet to Papal Minister of War, 7 November 1866, FRUS, 1866, 2: 142.

⁶⁸ De Lambilly to Allet, 8 November 1866, FRUS, 1866, 2: 145.

⁶⁹ Allet to Papal Minister of War, 9 November 1866, FRUS, 1866, 2: 144; an interesting and uncorroborated account of this incident in the anonymously written Life, Trial, and Adventures of John H. Surratt, the Conspirator: A Correct Account and Highly Interesting Narrative of His Doings and Adventures from Childhood to the Present (Philadelphia: Barclay, 1867), 39, ends with a flourish begging for speculation: "It is now stated, with what truth I cannot say, that two men with an outstretched blanket broke the fall." See William A. Tidwell's Come Retribution: The Confederate Secret Service and the Assassination of Abraham Lincoln (Jackson: University Press of Mississippi, 1988), 430, for a second and more contemporary opinion that the escape was "contrived."

safely on the ledge."⁷⁰ In either event, subsequent patrols yielded nothing although one would think that an injured man in a soiled and gaudy Zouave uniform would be relatively simple to track down. Surratt's further admission that in the fall he had struck his head on the ledge "with fearful force," enough, in fact, to have been "knocked completely senseless" and that he was, nevertheless, unharmed by any of the bullets that were "flattening themselves on the bare rock unpleasantly near my head" detracts from the martial reputation of his Zouave pursuers, and, significantly, raises the question of whether his escape was nothing more than a convenient way for the Papacy to extricate itself from an ongoing embarrassing situation.⁷¹

Exactly one week from King's last dispatch to Seward, King was now forced to admit to Seward that events had gotten completely out of his control. Intending on 9 November to speak with Antonelli regarding matters totally unrelated to the Surratt case, King was informed instead of Surratt's arrest by Antonelli's orders and of his subsequent escape. "As Veroli is close to the frontier," King despondently explained to Seward on 10 November, "it is not at all unlikely that Surratt will make good his escape from his Zouave pursuers into the Italian kingdom."⁷²

Due to his being kept incommunicado regarding Surratt's incarceration from 7-9 November and the subsequent fruitless search by Papal forces, King

⁷⁰ Risvold, Weichmann, 447.

⁷¹ *Ibid.*, 448.

⁷² King to Seward, 10 November 1866, FRUS, 1866, 2: 141-142.

initially suspected complicity on the part of the Papal government or at least laxity or untrustworthiness. He therefore chose to relay the salient details of the escape to other interested parties through means other than Papal channels.

Communicating with the Florentine minister George Marsh, for instance, on 9 November via a note personally transmitted by a trusted consular official, King prefaced his non-traditionally delivered dispatch with the explanation that he "did not feel at all sure that either a message by telegraph or a letter by mail . . . would, under the circumstances, escape the surveillance or possible interruption of the Papal authorities."⁷³ Two days later, to aid in identifying Surratt were he to emerge within the Kingdom of Italy, King delivered to Marsh the photograph--received belatedly from the State Department that day--which was to have been instrumental in Surratt's identification during his stay in the Papal States.⁷⁴

By 13 November King's suspicions had abated somewhat. He wrote to Marsh under that date that a Papal internal affairs investigation seemed to demonstrate that "on the surface, perfect good faith on the part of the Papal authorities, and an earnest desire to arrest the criminal" were evident.⁷⁵ Meanwhile Marsh, as if heir to both the problem and its concomitant demands, was demonstrating all the energetic and clear-headed foresight that King (and Wilding) had earlier exhibited. By 16 November Marsh's informants had located a wounded Surratt at a military hospital at Sora, fifty miles east of Rome. Not

⁷³ Ibid.

⁷⁴ King to Marsh, 12 November 1866, FRUS, 1866, 2: 123.

⁷⁵ King to Marsh, 13 November 1866, FRUS, 1866, 2: 124.

only did Marsh, at that juncture, promptly make a request of the local authorities to detain Surratt there, but he also, without the least bit of subtlety, reminded the Italian Minister of Foreign Affairs, Emilio Visconti-Venosta, of "the intense horror with which [the Lincoln assassination had been] regarded by the Italian government"--this, clearly, with a view toward the establishment of a proper context within which an extradition dialogue could begin.⁷⁶

While Marsh could not claim to have irrefutable evidence in hand to prove Surratt's identity or complicity, he did offer, in lieu of hard evidence, a copy of the original trial record of the conspirators as *prima facie* evidence.⁷⁷ Four days later, he was able to send Visconti-Venosta a photograph with an embarrassingly frank disclaimer suggesting that "time and the circumstances of Surratt's life for the last eighteen months may have produced some change in his features and expression, which will render the likeness between the original and the portrait less striking."⁷⁸ If Visconti-Venosta's confidence in the apparently unorganized and piecemeal efforts by the State Department flagged, it may have been bolstered by Marsh's reassurance that the identity of Surratt, if captured, could undoubtedly be established in Rome.⁷⁹

Anxious for a reply to his initiative regarding extradition, Marsh paid a visit to the Ministry of Foreign Affairs where much to his chagrin the Secretary

⁷⁶ Marsh to Visconti-Venosta, 16 November 1866, FRUS, 1866, 2: 124.

⁷⁷ Ibid.

⁷⁸ Marsh to Visconti-Venosta, 17 November 1866, FRUS, 1866, 2: 125.

⁷⁹ Ibid.

General, acting in Visconti-Venosta's absence, left him unsure whether even on "proper demand and proof" Surratt would be handed over to American authorities without "a stipulation on our part that the punishment of death should not be inflicted on him." Marsh relayed this depressing development to Seward on 18 November, but with an intuitive postscript expressing his confidence that the Italian authorities would--despite public opinion decidedly and widely against capital or otherwise severe punishment--relent on this issue.⁸⁰

During these negotiations, King had, on 16 November, dispatched Mr. J. C. Hooker to Sora with the photographic and documentary means needed to identify and apprehend Surratt. Discovering that Surratt had only briefly remained at Sora before continuing his flight toward Naples, Hooker immediately wired the Neapolitan consul, Frank Swan, alerting him to Surratt's approach.⁸¹ Swan's diligence, unfortunately, was more than offset by Surratt's luck and ingenuity. Surratt had apparently fallen in with a group of Garibaldini soon after his escape who, convinced of the propriety of his flight from the camp of their enemy and impressed with his *elan* provided him with a safe escort to Naples.⁸² Penniless, bruised, in a Papal zouave uniform, and generally arousing suspicion, he was held there unofficially by the police for a period of three days at Surratt's own request. Never at a loss for an alibi, Surratt offered to his curious inquisitors plausible explanations--pauperism and insubordination, respectively--for his enlistment and

⁸⁰ Marsh to Seward, 18 November 1866, FRUS, 1866, 2: 121-122.

⁸¹ King to Seward, 19 November 1866, FRUS, 1866, 2: 143-144.

⁸² Risvold, Weichmann, 448.

his incarceration.⁸³ His normal request to see the British consul being granted, Surratt thereafter "complained of his confinement, stating that he was a Canadian, and the consul claimed his release as an English subject."⁸⁴ Surratt himself added even more suspense to the drama, claiming later that he had been shadowed by two detectives "who did not care to arrest me in Naples in the presence of my Garibaldian friends."⁸⁵ Playing on the sympathies of the consul and "some English gentleman," Surratt, travelling now as Watson or Walters, was then able to secure and pay for passage on the steamer *Tripoli* bound for Alexandria.⁸⁶

Swan's dispatch to King of 18 November expanded on these developments. Despite Swan's encouraging disclosures, however, that the *Tripoli* would have to stop for refueling at Malta, that the cholera quarantine in force there would prevent Surratt's debarkation, and that he had quickly informed the Maltese consul of the developing situation, King's mood remained black.⁸⁷ Upon receiving Swan's report, in fact, King was moved to remark, "The probabilities, I fear, now are that Surratt will make good his escape."⁸⁸

When the geographic venue moved from Italy to British-controlled Malta, the diplomatic environment reflected a considerable and unpromising shift as well.

⁸³ Swan to Seward, 21 November 1866, John H. Surratt, H. R. 25, pp. 2-3.

⁸⁴ Ibid.

⁸⁵ Risvold, Weichmann, 448.

⁸⁶ Swan to Seward, 21 November 1866, John H. Surratt, H. R. 25, pp. 2-3.

⁸⁷ Swan to King, 18 November 1866, John H. Surratt, H. R. 9, pp. 29-30.

⁸⁸ King to Seward, 19 November 1866, FRUS, 1866, 2: 143-144.

The correspondence, during the period from 19 November to 21 November, between William Winthrop, United States Consul at Malta, and R. C. Legh, Acting Chief Secretary to the Government, clearly demonstrates that change. Winthrop opened the exchange with a request that "the conspirator Surratt . . . may be landed and detained in Malta under a proper guard until I can make the necessary arrangements to send him for trial to the United States, where his crime was committed."⁸⁹ A second memo dated the same as the first expressed Winthrop's growing anxiety concerning the distinct possibility of a lost opportunity. His up-to-date knowledge of the evolving situation was evident in his addendum's reminder that "the steamer *Tripoli* is nearly ready to leave I have some important arrangements to make which cannot be done after the vessel ha[s] left."⁹⁰ Aware of the existence of the British extradition treaty with the United States and acutely aware of the *Tripoli*'s brief layover in Malta, Winthrop expected from Legh no less than a prompt and affirmative reply. The diplomatic slap in the face that he received in its place was highlighted by a strict interpretation of British law governing extradition in which, as the dispatch made abundantly clear, "conspiracy to commit murder [was] not one of the offenses included."⁹¹ He also received two queries--the answers to which appear to be quite clearly found in Winthrop's preliminary dispatches--one questioning whether

⁸⁹ William Winthrop to R. C. Legh, 19 November 1866, John H. Surratt, H. R. 25, p. 4.

⁹⁰ Winthrop to Legh, 19 November 1866, John H. Surratt, H. R. 25, pp. 4-5.

⁹¹ Legh to Winthrop, 19 November 1866, John H. Surratt, H. R. 25, pp. 5-6.

Surratt's crime and the Lincoln conspiracy were one and the same; the second asking whether Walters or Watson were, indeed, the conspirator in question. As a final diplomatic sting, Winthrop was served an admonition spelling out the probable legal consequences of arresting the wrong person.⁹² One cannot help wondering if Winthrop paused to reflect on the bitter irony contained in Legh's formal closing. "I have the honor to be, sir, your most obedient servant."⁹³

Winthrop's venom was as formal as it was undisguised in the next day's dispatch to Legh: "I have the honor to acknowledge the receipt of your communication, which reached me yesterday afternoon at four o'clock, just as the murderer Surratt was leaving the island in the steamer which brought him."⁹⁴ He also took the opportunity to explain that Legh's dogmatic approach to diplomacy made Surratt's escape inevitable and that he himself had been, under the circumstances, totally prepared to suffer any consequences of someone's being accidentally detained.⁹⁵

Legh's rebuttal reflects the man's lack of imagination, if not intelligence. Not only is it without any expression of contrition, but, in his admission that "there is no person of the name of Watson or of any name like it on board the vessel, and that the only person who is dressed as a zouave is a passenger who calls himself John Agostine, a native of Candia [Crete]," it became clear to

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Winthrop to Legh, 20 November 1866, John H. Surratt, H. R. 25, p. 5.

⁹⁵ Ibid.

Winthrop that his British counterpart had, in all likelihood, fallen prey to one of a fugitive's timeless and least subtle ploys--a name change.⁹⁶

Winthrop's closing message to Legh was designed, it would seem, to make Legh aware of the magnitude of his *faux pas* and to differentiate Legh's sense of duty from his own which placed concern over a lost opportunity on a higher plane than concern over a possible breach of protocol. "In my opinion," Winthrop summarized, "the man who was dressed as a Roman Zouave, by whatever name he went, was the person I wanted, and would have arrested, had I the power to do it."⁹⁷ Perhaps to add at least one negative report to Legh's professional portfolio, Winthrop explained to Swan that he had enclosed all of the relevant Maltese correspondence in a dispatch to Seward "in the hope that he will give the officials in this neighborhood some knowledge of the treaty now existing for the arrest and delivery of criminals which they would appear so much to require."⁹⁸

Winthrop quickly took out double insurance against a repeat performance at Surratt's next destination and communicated with Consul General Charles Hale in Alexandria via telegraph by way of Constantinople and by a dispatch delivered by the consignees of the *Tripoli*. His own recent travails notwithstanding, he nevertheless explained that it would "not be a difficult matter for Mr. Hale to arrest the criminal before he lands, though it may cause him much trouble to

⁹⁶ Legh to Winthrop, 20 November 1866, John H. Surratt, H. R. 25, p. 6.

⁹⁷ Winthrop to Legh, 21 November 1866, John H. Surratt, H. R. 25, p. 5.

⁹⁸ Winthrop to Swan, 20 November 1866, John H. Surratt, H. R. 25, pp. 9-10. For a decidedly British point of view, see John H. Surratt, H. R. 25, p. 18.

identify Surratt, when he is among the seventy-nine laborers who are now on board the vessel."⁹⁹ The following afternoon Winthrop was able to relay to Hale the fact that "the man dressed as a zouave hails from Canada, and not Candia. *I firmly believe this man is Surratt.* I think you can track him from his Roman dress."¹⁰⁰ The next day, 22 November, Winthrop wrote to Seward, again venting his disgust with the behavior and attitude of the Maltese authorities as well as expressing his opinion that the situation would develop differently in Alexandria. Hale, he explained, "having judicial powers can act for himself and not be hampered by legal quibbles as I think I have been here."¹⁰¹ Written two days later and presumably arriving in Washington on or near the same date as Winthrop's 22 November dispatch was an observant and optimistic note from George Marsh in Florence:

My present impression . . . is that the accused would not have been surrendered [here], and it would therefore be fortunate if he should be found in the Turkish empire, where the extra-territorial jurisdiction of the consuls would empower them to arrest and detain him without offense to the Turkish government.¹⁰²

The denouement of the tale of Surratt's pursuit is rather mundane by comparison with its previous unpredictable chapters. Surratt, aboard the *Tripoli*, arrived in Alexandria on 23 November and had to wait out a quarantine period

⁹⁹ Winthrop to Swan, 20 November 1866, John H. Surratt, H. R. 25, pp. 9-10.

¹⁰⁰ Winthrop to Hale, 21 November 1866, John H. Surratt, H. R. 25, p. 10.

¹⁰¹ Winthrop to Hale, 22 November 1866, John H. Surratt, H. R. 25, p. 3.

¹⁰² Marsh to Seward, 24 November 1866, John H. Surratt, H. R. 25, p. 7.

giving consul Hale ample time to arrange for his apprehension. Betrayed as much by his attire as by what Hale called "his American type of countenance," he was quickly identified, arrested, and read his rights, all the while, in Hale's opinion, "displaying neither surprise nor irritation."¹⁰³ This fatalism was later explained by Winthrop who reasoned that Surratt, "having been examined at [Malta] on board the *Tripoli* . . . saw very clearly that something was wrong and . . . prepared himself to meet any emergency which might arise on his arrival in Egypt."¹⁰⁴

Mindful of the difficulties encountered by Surratt's previous pursuers, Hale, in the same correspondence in which he announced Surratt's arrest, expressed his desire to relieve himself of his diplomatic problem as quickly as possible. To that end he suggested to Seward on 27 November that an American man-of-war be ordered to Alexandria. "I earnestly hope that one may soon come here to receive him," he disclosed, a statement betraying his anxiety but belying the actual efficiency with which he handled the situation.¹⁰⁵ Significantly, Hale was aware of the fact that

as the prisoner avowed himself an American, and submitted without objection, to arrest by me on my statement that I acted for the United States, and especially as he has no paper to suggest even a *prima facie* [sic] claim for belonging to any other jurisdiction, there is no other authority

¹⁰³ Hale to Seward, 27 November 1866, John H. Surratt, H. R. 25, pp. 13-14. For Surratt's romanticized version of the same incident, see Risvold, Weichmann, 449.

¹⁰⁴ Winthrop to Hale, 6 December 1866, John H. Surratt, H. R. 25, pp. 20-21.

¹⁰⁵ Hale to Seward, 26 November 1866, FRUS, 1866, 2: 225-226.

which can rightfully interfere here with his present custody.¹⁰⁶

The only anxious moment for Hale, in fact, occurred when he made an offer to the British legal vice-consul in Alexandria to "hear any claims of pretensions [Surratt] might choose to put forward."¹⁰⁷ Surratt, however, for whatever reason, made no effort to seek refuge under the British flag as he had done previously and the vice-consul's visit was never arranged. Having thus taken care, in Hale's words, both to "prevent . . . any pretense that the Egyptian government was taken unawares and . . . avoid any embarrassment in my proceeding from unexpected objections," Hale could proudly announce to Seward that "the extradition was accepted here as a matter of course."¹⁰⁸

Held within the quarantine walls until 29 November, "Surratt was transferred," Hale reported to Seward on 4 December, "under a sufficient guard, from the quarantine grounds to the government prison where he remains in safe confinement."¹⁰⁹ Here he awaited the arrival of the steamship *Swatara* that would carry him to America.

Surratt's arrest was met with mixed feelings by officials of the American government. Secretary of War Edwin Stanton, requesting that Secretary of the Navy Gideon Welles meet him and Secretary of State Seward at the War Department on 3 December either did not regard the matter too highly or did not

¹⁰⁶ Ibid.

¹⁰⁷ Hale to Seward, 27 December 1866, FRUS, 1866, 2: 82-83.

¹⁰⁸ Ibid.

¹⁰⁹ Hale to Seward, 4 December 1866, John H. Surratt, H. R. 25, p. 17.

want others to know just how much import he assigned to it. Welles, summarizing the meeting in his diary, noted that he had just learned "on inquiry that [the United States government] had not even made out requisition or done anything as yet [regarding Surratt]." Welles was instructed to telegraph Admiral Louis M. Goldsborough about sending a vessel to transport Surratt, but the meeting then quickly moved on to discuss the Bay of Samana proposal by the Dominicans, a matter which Welles recorded as being "a much more important subject" to Stanton.¹¹⁰

Both Stanton and Judge Advocate Holt had reasons for not looking forward to John Surratt's presence in a courtroom when barely a year and a half had passed since these men had figured so prominently in his mother's trial and execution. As one historian put it, "[over] Stanton's and Holt's understandable objections, John Surratt had been located and returned from Europe. Here was no mute skeleton in the closet, but a corpus delicti with the inherent ability to snap open the Pandora's box of the whole miserable proceedings."¹¹¹ President Johnson's estimation was an entirely different story. To him, and to Welles who recorded the President's remarks,

no good could result from any communication with Surratt, and that the more reckless Radicals, if they could have access to him, would be ready to tamper with and suborn him. The man's life was at stake; he was desperate and resentful. Such a person and in such a condition might, if approached, make almost any statement. He, therefore. . . should not be

¹¹⁰ Welles, Diary, 2: 630-631.

¹¹¹ Hoehling, Post-Appomattox, 242. For similar appraisals of this development, see Dewitt, Judicial Murder, 151, Starkey, Booth, 176, and Eisenschiml, "A 'Study' of John Surratt?", 187.

allowed to communicate with others, nor should unauthorized persons be permitted to see him.¹¹²

Nor is one reassured of the real intentions of the Department of State when an official who played such an integral part in the arrest of John Surratt as Consul Charles Hale could remark in a pensive and unsure note to Seward on 3 December that "[he] trust[ed] that in all these measures to secure the arrest and extradition of Suratt [sic], I have only anticipated the wishes and directions of the State Department."¹¹³

If one subscribes to the theory that the State Department was loath to acknowledge Surratt's existence--let alone extradite him--then one must also assume that Surratt would have done practically all he could to fulfill the role that reluctant United States government officials demanded of him. He did, in fact, habitually change his name and, on occasion, alter his physical appearance. His best efforts, it would seem, were thwarted by chance encounters and by his continued desire for notoriety. Ironically, and perhaps most significantly, he was "tracked down . . . by zealous consular officials . . . who did not understand how desperately their superiors in Washington wanted him to disappear for good."¹¹⁴

¹¹² Welles, Diary, 3:31.

¹¹³ Hale to Seward, 3 December 1866, Stock, Papal Dispatches, 400-401. According to Thomas Reed Turner, this air of reluctance--whether intentional or inadvertent--by the government to bring Surratt to trial continued even after his arrest. While the author cannot trace to an ultimate source the orders given to the captain of the ship bearing Surratt to power the vessel with sail rather than coal, he considers the fact that the ship consequently took forty-five days to cross the Atlantic quite dilatory and, thus, significant. See Turner, Public Opinion, 228.

¹¹⁴ Hanchett, The Lincoln Murder Conspiracies, 86-87.

Surratt himself corroborated this view in an 1870 interview in which he claimed that, as a result of his discovery by these naive consuls, the State Department had no choice "but to express thanks and take measures for having me returned to this country for trial."¹¹⁵

The government's true position on John Surratt would next be tested within a confined and legally delineated courtroom. This was in stark contrast to the global venue where the first act had been played out.

¹¹⁵ Risvold, Weichmann, 446.

CHAPTER IV

TRIAL BY JURY

Prologue: the Milligan Case

On 17 December 1866, between the arrest of John H. Surratt in Alexandria, Egypt and his arrival in America for his trial, the United States Supreme Court handed down its decision regarding civilian petitioner Lambdin P. Milligan. Milligan, a Huntington, Indiana lawyer, described as "an irreconcilable opponent of the Civil War" and a "student of constitutional law [who] held unshakable views with respect to certain of its provisions," had long argued his belief in the sovereignty of states and the dissolubility of the voluntary Union they had formed.¹ Through his words and actions in support of those beliefs and for his association with extremist political groups that shared his ideals, Milligan had earned the disdain, suspicion and, eventually, the fear of his enemies.² Accused on 21 October 1864 of conspiracy against the United States for "affording aid and comfort to the rebels," "inciting insurrection," "disloyal practices," and "violation of the laws of war," he was found guilty by a military commission and sentenced to die.³ Execution of the sentence was averted, however, by means of a clever legal ruse engineered by Indiana judge David Davis wherein Davis first received Milligan's plea for habeas corpus, then convinced another circuit court judge to

¹ Darwin Kelley, Milligan's Fight Against Lincoln (New York: Exposition Press, 1973), vii.

² Kelley, Milligan's Fight Against Lincoln, vii.

³ Dewitt, Judicial Murder, 122.

oppose him on the same issue, thereby forcing a decision by the United States Supreme Court. A petition to President Andrew Johnson via Indiana Governor Oliver P. Morton followed, requesting that Milligan's sentence be commuted to life imprisonment "thereby allowing a resolution of the issue before the Court which would not have been permissible if Milligan were dead."⁴ Interestingly, upon Johnson's refusal to intervene, it was Secretary of War Stanton, described by Milligan himself as a friend, fellow associate of the bar and visitor to his home, who eventually engineered the validation of Governor Morton's petition.⁵

In a landmark unanimous decision, the Supreme Court ruled that laws of war regarding non-military personnel do not apply when civil courts are functioning (as they had been during Milligan's activities in Indiana). The decision also specified that "the president could not of his own motion authorize . . . a [military] Commission, and that, as a matter of fact, the Congress had not authorized such a Commission."⁶ While not banning military commissions outright, the decision limited their jurisdiction to districts in the immediate theatre of war.⁷

⁴ Steers, "Military Trial of the Conspirators," 724.

⁵ Kelley, Milligan's Fight Against Lincoln, 100.

⁶ Dewitt, Judicial Murder, 129.

⁷ Steers, "Military Trial of the Conspirators," 725. Judge George Fisher, later to preside at John Surratt's 1867 trial, expressed his opinion on the Milligan case during his charge to the jury. He believed that Americans who were shocked by the Milligan pronouncement concerning civil liberties would have been even more shocked had a court declared that the president did not have the power to convoke such military commissions in time of national emergency. See Trial of John H. Surratt, 1370.

Vilified by the Radical Republicans and celebrated by "a generation of young lawyers" who "found the president beyond his legal power in the exercise of domestic prerogative," the Milligan case held direct or indirect significance for a variety of Americans.⁸ For Milligan, it meant his release.⁹ For Sarah F. Mudd, whose husband, Dr. Samuel Mudd, was currently serving a life sentence for his part in the Lincoln murder conspiracy, the Supreme Court's decision held out the hope for a reprieve. In a letter to President Johnson, she explained the mixed emotions with which she received the news. "I was hopeful after the decision of the Supreme Court [that the] trial of the Civilians by military Court [would be declared] illegal [and that] he would be released. So far I have been disappointed."¹⁰ For John Surratt, whose activities in Washington, D.C. as part of Booth's sundry plots fell within the geographic and, thus, the legal, parameters of the Milligan decision, an entirely different opportunity for justice was afforded than was offered to his mother. He would not have to face a military commission such as that which had resulted in his mother's death. For the executive branch of the United States government, the decision meant a complete change in tactics and strategy. Whereas John Surratt's fugitive status had been faithfully maintained by them for over a year and a half, it now was in the best interests of the government to prosecute and convict him. Only a guilty verdict would

⁸ Kelley, Milligan, 102.

⁹ Ibid., 105,107. Milligan later sued for \$500,000 citing damages "caused by trespass and false imprisonment." He eventually was awarded five dollars for his travails.

¹⁰ Graf and Haskins, The Papers of Andrew Johnson, 10: 632.

validate the executions of the conspirators in the 1865 trial. In particular, only a guilty verdict would stifle the already budding martyrdom of Mary Surratt whose indictment, conviction, and execution had been founded on questionable evidence and whose government-imposed peril may have been merely a lure to draw out her fugitive son. For the president and the majority of his cabinet, the Supreme Court's decision was taken in stride if we may judge from Navy Secretary Gideon Welles. "[The Milligan decision] was, I think, no surprise upon any of us, and I think not more than one regretted it. The President was gratified."¹¹

For David Miller Dewitt, writing 30 years after the fact, both the immediate and long-term ramifications of the Milligan case were abundantly evident. Together with the crumbling of Stanton's Confederate conspiracy theory, the Milligan case, in Dewitt's estimation, "discredited forever the judgement of the Military Commission, re-opened wide all questions of testimony, of character, of guilt or innocence, and summoned the silent and dishonored dead to a new and benignant trial."¹² Dewitt and others obviously saw in the Milligan case an opportunity to review if not appeal the 1865 ruling by the Commission that resulted in Mrs. Surratt's and the other conspirators' deaths.

For the prosecution team assembled to convict John Harrison Surratt, the case opened the doors to far more problems, barriers, and distractions than it had perhaps closed. While the prosecutors' objective would not be changed by the Milligan case, their tactics would have to be carefully monitored and drastically

¹¹ Welles, Diary, 2: 644.

¹² Dewitt, Judicial Murder, 163-164.

altered. The indictment would have to be perfectly phrased. The jury would have to be scrupulously examined for partisan temperament. Witnesses whose character, and thus testimony, in the 1865 trial had subsequently come under scrutiny would have to be avoided entirely or sparingly used. And, overriding all other considerations, the ghost of Mary Surratt must not be indirectly subpoenaed by means of offhand remarks, careless allusions, or even well-intentioned condolence. Her presence could work only to the detriment of their objectives.

The Trial of John Harrison Surratt

On 10 June 1867, the opening day of John Surratt's trial, the head of Surratt's defense team, Joseph H. Bradley, was presented by Judge George P. Fisher with the simple and traditional inquiry into whether he was ready to proceed with the trial. Fisher was met with a reply that Thomas Mealey Harris, one of the nine officers that had tried Mrs. Surratt, took to be conceited, deceitful, and tasteless.¹³ Bradley's boastful response: "The prisoner is ready, sir, and has been from the first" was, in fact, the first of many opportunities for the bench to lower its regard for Surratt's attorneys.¹⁴ Judge Fisher, labelled by one historian as "guardian of the interests of the War Department" and by diarist and cabinet member Gideon Welles as a puppet indirectly controlled by Secretary of War Edwin Stanton, seemed bound, as Stanton's surrogate, to clash with anyone whose position on the Surratts or on the government's estimation of the Surratts

¹³ Harris, Military Commission, 235.

¹⁴ Trial of John H. Surratt, 3.

ran counter to Stanton's.¹⁵ John Surratt's defense team, composed of Joseph H. Bradley, Sr., Joseph H. Bradley, Jr., and R. T. Merrick, seemed ideally suited for that purpose. Displaying both "political opposition to the government" and "religious sympathies with Mrs. Surratt," their clash with the presiding judge seemed preordained. One writer's "charitable conclusion on their behalf" was that their "sympathies and personal biases so prejudiced their minds that they could not bring themselves into a judicial frame for the trial of this case."¹⁶ The same writer saw in their cleverly and carefully chosen statements a protracted attempt to fashion this trial into a retrial of their client's mother.

During the next few days, the flood of motions proposed by the prosecution would probably make Judge Fisher wonder if--stripped of its cocksure attitude--Bradley's opening remark had not been far off the mark. The defense, despite its relative lack of funds was, in fact, prepared to go to trial. The prosecution, on the other hand, composed of New York attorney Edwards Pierrepont, District Attorney for Washington Edward C. Carrington, Assistant District Attorney Nathaniel Wilson, and Albert Gallatin Riddle indeed had a few irregularities for Fisher to iron out before they were ready to begin their presentation of evidence.¹⁷ If anyone needed evidence that John Surratt's trial

¹⁵ Shelton, Mask for Treason, 92-93; Welles, Diary, 3: 160.

¹⁶ Harris, Military Commission, 266-267.

¹⁷ Welles, Diary, 3:452. In this same entry of 13 October 1868, Welles tags Pierrepont as "one of Stanton's jockey lawyers" and remarked that he "has been paid enormous fees by Stanton and Steward." In addition, Welles found him to be "a cunning and adroit lawyer, but not a true and trusty man. The Democrats of New York let themselves down when they made him one of the sachems of Tammany. They are getting justly paid."

would differ from his mother's, the pre-trial motions and their consideration by the judge would have provided them ample assurance. In addition, if anyone needed evidence that the government would do anything within its power to bring about a conviction of John Surratt, one need not look further than Judge Fisher's decisions with regards to those motions.

The first motion was proposed by District Attorney Carrington who headed the prosecution team.¹⁸ Insisting that the purpose of his motion was not to delay the proceedings, Carrington then "challenge[d] the array of the panel," requesting, in other words, that the jury already empaneled for the trial be quashed.¹⁹ Citing a prior deposition submitted by the Registrar of Washington City, Carrington suggested both that the general jury pool of 520 persons and the subsequent jury selected from that pool had not been chosen according to the guidelines specified in a 16 June 1862 act of Congress regarding jury selection in the District of Columbia.²⁰ Following a day and a half of legal wrangling, Judge Fisher decided

¹⁸ Welles, Diary, 1: 56. Welles's Spring 1861 entry comments on Carrington's appointment over Edwin Stanton as District Attorney for Washington. Tellingly, Welles records Postmaster General Montgomery Blair's opinion that the perceived lack of integrity on Stanton's part was the deciding factor in the choice.

¹⁹ Motion of Edward Carrington to Judge George P. Fisher, 10 June 1867, Papers Relating to the Trial of John H. Surratt, Record Group 21: Judiciary/District and Circuit Courts, Criminal Case File 4731, National Archives, Washington, D.C. (Hereinafter cited as John Surratt Papers, 21/4731).

²⁰ Deposition of Samuel E. Douglas, n.d., John Surratt Papers, 21/4731. Carrington had an additional specific concern that the Registrar for the City of Washington had not verified that all the prospective jurors were tax-payers, another prerequisite of that act; see also Trial of John H. Surratt, 30, for Pierrepont's response, born of frustration with the defense's deliberate obtuseness concerning the purpose of the voting act in question: "Why not say, 'Let the register and these men go and do as they please about it!' The law was made

on 12 June to accept Carrington's motion and the marshal for the District of Columbia was ordered to "summon a jury of [twenty-six] talesmen" to act in lieu of the quashed jury.²¹ It is interesting to note that whereas Carrington's expressed intention to the court was not to cause any delay of the proceedings, he had recorded quite different feelings in a pre-trial letter to the Attorney General's office. Agreeing with Judge Pierrepont, he expressed the opinion that it would "be inexpedient to try Surratt at the ensuing term of the Criminal Court commencing on the 3d Monday of June" and that he would "deem it incumbent upon me to decline to proceed with the case." Further, he asked the Attorney General "whether it is not my duty to resist any requirement by a judge to proceed to the trial of a case in which I am not prepared, or which for reasons of public policy, I consider it inexpedient to try."²²

Perhaps laying the groundwork for a later appeal, Surratt's attorneys filed a motion on 13 June arguing that the jurors being selected by the marshal according to Fisher's orders would be, like those before them, improperly empaneled.²³ Fisher denied this motion, the first of many requests by the defense to be overruled, and the selection of veniremen began. Other than a spate of candidates who were dismissed due to illness, non-residency and failure to pay

²¹ Trial of John H. Surratt, 46, 14. Part of Fisher's concern centered on whether or not other accused persons hanged or otherwise punished for their crimes had been convicted by other similarly —and illegally —empaneled juries.

²² Carrington to Pleasants, n. d., John Surratt Papers, 21/4731.

²³ Motion to Quash, 15 June 1867, John Surratt Papers, 21/4731; See Trial of John H. Surratt, 18-21, for Merrick's earlier argument that the 1862 act did not specifically say that an improperly empaneled jury should be considered void.

taxes, prospective jurors were relieved primarily for two reasons, those who had formed or had expressed an opinion on the case and those who expressed scruples concerning the administration of the death penalty.²⁴

On 15 June, Carrington responded with a second objection to the empaneling of the jury, this time on the grounds that as the empaneling was begun in the present term of the Circuit Court under the direction of Judge Fisher who was then sick, he felt that it was "illegal to proceed before [Fisher's replacement] to complete the empaneling of the jury."²⁵ This objection was overruled by Judge Wylie, Fisher's replacement, but not before the defense team--sensing yet another delay tactic in the prosecution's motion--submitted a plea for the court to overrule the prosecution's motion to continue the case until the next term. In the first of many emotional appeals made by the defense team, Surratt's attorneys took the opportunity in their argument for a speedy trial to cite details of their client's living conditions since his arrest. "He has been kept in close confinement, [has been] wholly excluded from all intercourse with any human beings but those who were employed to administer to his absolute needs, [and has been] obliged to wear the very dress in which he was arrested."²⁶ Taking care to mention the fact that "he has been allowed such indulgence as would properly be

²⁴ Voir Dire List, 20 June 1867, John Surratt Papers, 21/4731; see also Trial of John H. Surratt, 52-112, for verbal examination of prospective witnesses.

²⁵ District Attorney Carrington's Objection to the Empanelling of the Jury, John Surratt Papers, 21/4731; see also Trial of the Conspirators, 86, for Carrington's concern that yet a third judge would enter the picture if the case was carried over into the next term of Circuit Court.

²⁶ Defense Plea to Overrule Prosecution's Motion to Continue Case, John Surratt Papers, 21/4731.

deemed permissible toward one charged with an offense as heinous in its character as that alleged against him," Surratt's attorneys saw the need to challenge the prosecution's motion. After all, the challenge continued, whereas Surratt was forced by his circumstances to conduct his pre-trial business from within prison walls, the prosecution, by comparison, "had the fullest notice and the amplest means to prepare for the trial of this cause . . . and now have no reasonable ground upon which to ask its further postponement."²⁷ Citing prior motions by the prosecution to postpone, the challenge closed strongly: "He is now ready . . . he demands a speedy trial, a trial at this term of this court."²⁸ It appears that the challenge was heeded.

Carrington next proposed that the twelfth and final juror not be sworn in until Monday 17 June, thereby granting those already selected an unencumbered weekend during which they might "settle their business" before the lengthy trial began.²⁹ On the surface, this would seem to be a rather innocuous proposal and one surely to curry favor with the jury. The senior Bradley, however, took exception because this apparent gift by the prosecution to the eleven jury members already chosen would result in the case being carried over into the next term where it would be heard by Judge Cartter, someone rumored to be--of no small import to John Surratt--"a coarse, vulgar, Radical in the hands of Stanton."³⁰

²⁷ Ibid.

²⁸ Ibid. Words underlined appear as such in original.

²⁹ Trial of John H. Surratt, 112.

³⁰ Ibid. For Judge Cartter quotation, see Welles, Diary, 3: 160.

The above judicial quirk is neatly explained by historian Larry Starkey:

any jury which was not fully impanelled [sic] by the end of the sitting court's term would be dismissed and a new trial date would have to be set, following a first-come-first-served docketing rule. In effect, a case docketed late in a term would have to quickly impanel its jury or else go to the bottom of the list for a trial date during the following term--a delay of several months at best.³¹

With debate swirling chiefly around the legality of sending an empaneled jury home, an agreement was apparently reached and "just before midnight on the final day of the old court's term, Saturday, June 15, the final juror was sworn in."³²

With a slate of jurors finally impaneled, Carrington proceeded to read the four count indictment against the defendant.³³ Strikingly similar to the indictment in the 1865 trial of the conspirators, it differed only in the absence of the word "traitorously," a necessary omission in light of the resumption of peace before John Surratt's trial began, but an omission, nonetheless, that removed any "political purpose" from the conspiracy.³⁴ The first count charged Surratt with the murder of Abraham Lincoln. In a conspiracy case, explains one writer on the subject, "the act of any one of the parties thus conspiring, in pursuance of said conspiracy becomes the act of all."³⁵ Simply put, all conspirators, regardless of their degree of participation, share the guilt in equal portions. To validate this

³¹ Larry Starkey, Wilkes Booth Came to Washington (New York: Random House, 1976), 177.

³² Starkey, Booth, 177.

³³ Indictment Against John H. Surratt, John Surratt Papers, 21/4731.

³⁴ Harris, Military Commission, 231.

³⁵ *Ibid.*, 230.

charge, the prosecution had to prove three things: that a conspiracy to murder existed, that the murder was perpetrated by one of the conspirators, and that the murderer was a member of the conspiracy at the time the murder was committed.³⁶

The second count of the indictment claimed that John Surratt "was present aiding, helping, and abetting, comforting, assisting and maintaining the said John Wilkes Booth" in his assault on Lincoln.³⁷ This charge would require proof that Surratt was present at the "time and place" of the murder and that he was, in fact, "aiding and abetting" Booth in the murder.³⁸

The third count charged Surratt with cooperating with Booth, Herold, Atzerodt, Paine, his mother, "and others to the jurors aforesaid unknown" in an assault on Lincoln that resulted in his death.³⁹ Proof of this accusation lay in demonstrating that John Surratt had acted in conjunction with the others specified.

The fourth and final charge, claiming that Surratt "unlawfully and wickedly did combine, confederate, and conspire together feloniously to kill and murder one Abraham Lincoln," would require three proofs.⁴⁰ The prosecution would have to demonstrate that there had been a collaborative effort to the group's members,

³⁶ Ibid.

³⁷ John Surratt Papers, 21/4731.

³⁸ Harris, Military Commission, 231.

³⁹ John Surratt Papers, 21/4731.

⁴⁰ Ibid.

that the crime had indeed been perpetrated and that John Surratt had been a member of the conspiracy that orchestrated the crime.⁴¹ Following the reading of the indictment, Surratt's attorneys, speaking for their client and stealing some of Carrington's thunder (it had been he who had proposed the unencumbered weekend for the jurors), proposed that the jury "be allowed to separate till Monday morning," a suggestion accepted by the court.⁴²

When court resumed on Monday 17 June, Surratt himself entered a petition to the court for a rather special consideration. Pleading that his involvement in this capital case had already "exhausted all his means and such further means as have been furnished him by the liberality of his friends in preparing for his defence [sic]," he asked that he be granted the power "to summon his witnesses and to compel their attendance at the cost of the government of the United States."⁴³ Judge Fisher, perhaps not wishing to incur the disfavor of Stanton who would not want it said that the accused had not been afforded every opportunity to acquit himself, ordered the petition to be carried out and that "the fees of all such witnesses as may hereupon appear to be necessary to the cause of the prisoner . . . be paid in the same manner as government witnesses are paid."⁴⁴ This would be one of a precious few coups for

⁴¹ Harris, Military Commission, 230-231.

⁴² Trial of John H. Surratt, 116.

⁴³ Petition of the Defendant for an Order to have his Witnesses Summoned at the Expense of the Court and Ordering of the Court, John Surratt Papers, 21/4731.

⁴⁴ Ibid.

the defense.

Assistant District Attorney Nathaniel Wilson was chosen to open the case for the prosecution. Relatively brief by the later standards of this trial, Wilson's simple but dramatic opening statement contained several salient points each linked to a specific charge of the indictment: one, that at 10:20 P.M. on 14 April 1865, John Surratt was in front of Ford's Theatre in company with John Wilkes Booth whose "cool and calculating malice was the director of the bullet that pierced the brain of the President and the knife that fell upon the face of the venerable Secretary of State;" two, "that from the presence of the prisoner, Booth, drunk with theatrical passion and traitorous hate, rushed directly to the execution of their mutual will;" three, that the "companionship" of Booth and Surratt was neither "accidental" nor "unexpected;" and, four, that "[John Surratt] is a traitor to the government that protected him."⁴⁵ To jog the collective memory of the jury regarding Surratt's global peregrinations and to assist its members in the government's interpretation of the facts, Wilson closed his statement with a reminder that "in law flight is the criminal's inarticulate confession."⁴⁶

Judging from the testimony presented by the government, the strategy of the prosecution appeared to hinge on the creation of several concentric circles of evidence, each more specific and each progressively damning. One might argue that the prosecution's case should have begun with reconstructing the conspiracy and its constituent parts, then proceeded to detail the role of the accused within

⁴⁵ Trial of John H. Surratt, 118-119.

⁴⁶ *Ibid.*, 119.

those parts. Foregoing the logical, however, the prosecution began with the emotional--establishing John Surratt's presence at Ford's Theatre on the day of Lincoln's murder.⁴⁷ It was alleged that John Surratt was in the presidential box at the theatre around noon making arrangements to prevent anyone entering the box from the outside later that evening. The man alleged to be Surratt had calmly explained to the witness that "[tonight's] crowd may be so immense as to push the door open, and we want to fasten it so that this cannot be the case."⁴⁸

Sergeant Joseph M. Dye, a witness from the 1865 trial of conspirators, was then called on to reconstruct Surratt's alleged activities at the time of the assassination. Dye described the man who joined Booth outside Ford's theatre as someone "neat in appearance" with "a very small moustache" who behaved as in a state of "great excitement, exceedingly nervous and very pale."⁴⁹ Dye informed the court that he later positively identified this neatly dressed person as John Surratt when he was taken to Surratt's prison cell.⁵⁰ Dye's chief function, however, was to cast John Surratt in the role of the Fate of Greek myth who decided how long a person should live. Surratt's role on the night of the assassination, according to Dye, was to periodically call out the time to Booth and to let Booth know when

⁴⁷ Ibid., 133. Bradley, in fact, objected —unsuccessfully —to the admissibility of the first day's evidence on the grounds that his client's connection with the conspiracy had not yet been established.

⁴⁸ Ibid., testimony of Benjamin Rhodes, 501.

⁴⁹ Ibid., testimony of Joseph M. Dye, 134-135, 147.

⁵⁰ Ibid., 148.

to strike.⁵¹ The defense, in cross-examination, failed to successfully challenge Dye's additional claim that not only had he spoken to Mrs. Surratt at her house later that same night on his way back to camp, but that he had gained the impression from their brief conversation that she knew the nature of what had happened at Ford's Theatre and was only waiting for the verification of it.⁵²

On 21 June, John Surratt's attorneys petitioned the court for the right to recall Dye (and two other witnesses) "for the purpose of further cross-examination."⁵³ Apparently it had come to the attention of the defense that Dye was then "under bonds to answer in the city of Philadelphia to the charges of passing counterfeit money" and that two other witnesses had, since testifying in court, recalled specific and relevant dates involving Surratt that had not been originally presented.⁵⁴ Fisher, seeing a "geometrical progression" in recalling persons either to verify their veracity or to reorganize their memories, denied the motion. Fisher mused over what might take place first if he were to allow such a procedure: "the end of this trial or the return of the children of Abraham to the holy city."⁵⁵

From 18 June to 5 July, a dozen or more witnesses testified to have seen

⁵¹ Ibid., 135. The last time that this neatly dressed character called out the time was 10:10 P.M., just minutes before Booth fired the fatal shot.

⁵² Ibid., 148-156.

⁵³ Motion by the Defendant for the Recall of Witnesses, John Surratt Papers, 21/4731.

⁵⁴ Ibid.

⁵⁵ Trial of John H. Surratt, 267-270.

John Surratt in Washington, D.C. on 14 April, establishing a preponderance of evidence designed to stand up to any alibi claiming that Surratt was elsewhere on that date. Ranging from those who had known him "since he was a boy" to those who recognized him only because he was with Booth--a well-known celebrity--witnesses chronologically traced Surratt's activities from an early morning trip to the barber shop with Booth, Atzerodt and McLaughlin to a mid-afternoon meeting with Booth and others at a restaurant or bar to a Pennsylvania Avenue rendezvous with Booth at 6:00 P.M. to the dining room of the Surratt boardinghouse that evening and finally to the Washington train station.⁵⁶ Cross-examination by the defense yielded mixed success. Several witnesses wavered in their certainty of identification and one was chastised by Bradley for not having previously told the authorities what he knew.⁵⁷ The potentially damaging claim that Surratt was seen at the Washington train station was downplayed somewhat by Bradley who maneuvered the witness into stating that he did not consider Surratt's presence significant enough to report.⁵⁸ Generally speaking, however, the prosecution's efforts at this point in the trial to place Surratt in Washington on the day in question were largely successful.

Placing John Surratt at the heart of the conspiracy was a relatively easy matter as well. While the prosecution relied on several insiders to account for major details, it attempted--unsuccessfully--to enter other inflammatory

⁵⁶ Ibid., 494-495, 158-159, 240, 162-163.

⁵⁷ Ibid., testimony of Benjamin W. Vanderpoel, 244-245.

⁵⁸ Ibid., testimony of John Lee, 195-196.

information into evidence. One cannot imagine the jury giving much credence, for example, to Surrattsville resident E.L. Smoot's testimony that Surratt had told him that "If the Yankees knew what he had done, or what he was doing they would stretch his neck" after Smoot admitted--under cross-examination--that a government official had told him that he would be paid ten dollars a day if he "will do what is right."⁵⁹ Similarly, William E. Cleaver, a veterinary surgeon, claimed that Surratt told him that he and Booth "had some bloody work to do" and that he was going to kill that "damned old scoundrel" [Lincoln] for ruining Maryland and the rest of the country.⁶⁰ As he had with Smoot, Bradley, during cross-examination, negated Cleaver's testimony with Cleaver's own admissions that he had withheld information at the 1865 conspiracy trial, that he had associated with perjurer Sanford Conover--and had, in fact, passed details of John Surratt's activities on to Conover--and with Bradley's intimation of Cleaver's pending conviction on a rape (some sources say manslaughter) charge Bradley's accusation that Cleaver had sold a horse of his (Bradley's) without his authority, did nothing to enhance Cleaver's veracity either.⁶¹

As expected, the great bulk of incriminating evidence was presented by John Lloyd, Louis Weichmann, and Lewis McMillan. Surratt's erstwhile friend Henri Beaumont Ste. Marie added precious little evidence as if the government

⁵⁹ Ibid., testimony of E. L. Smoot, 190.

⁶⁰ Ibid., testimony of William E. Cleaver, 204-206.

⁶¹ Ibid., 209-211.

regarded his work as done the moment that Surratt arrived in America.⁶²

As he had done during the trial of the conspirators, Lloyd detailed the arrivals and departures of the visitors to the Surrattsville tavern on 11 April and 14 April 1865. For whatever reasons, Lloyd devalued his testimony this time with blurred recollections that provided ample opportunities for extrapolation by the jury. Concerning the guns and rope that John had entrusted to him "about five or six weeks before the assassination," for example, Lloyd now stated that when John Surratt returned two or three days later, he "supposed at that time that [Surratt] was going to take those things away and I said nothing to him about them."⁶³

Regarding the visit of Mary Surratt and Weichmann on the day of the assassination to deliver the field glass and to remind Lloyd to be prepared for the callers later that night, Lloyd now tempered his own guilt--in a fashion--with the admission that he had been drinking heavily prior to Mrs. Surratt's arrival. Neither could--or would--Lloyd positively identify the field glass that he had allegedly passed on to Booth and Herold when it was placed in evidence.⁶⁴

Finally, although Lloyd could not deny having overheard the incriminating conversation between Booth and Herold regarding their murderous activities in Washington as he waited on them and could not deny having given aid and provisions to them as they prepared to continue their flight south into Maryland, Lloyd never once called Booth by name in all the testimony recounting those

⁶² Ibid. McMillan's testimony accounted for 23 pages (461-484), Lloyd's for 25 (277-302), and Weichmann's for 90 (369-459).

⁶³ Ibid., testimony of John Lloyd, 278.

⁶⁴ Ibid., 281, 288.

events. Booth now became "the man with the broken leg" or the "partner" of the one who did all the talking.⁶⁵ In fact, the only significant evidence not personally impeached by Lloyd himself concerned the 11 April visit by Mrs. Surratt to verify her son's prior delivery of the "shooting irons." His own unsolicited confession that on the morning of 15 April he had told everything he knew about the conspiracy to a government agent after being informed by that agent that "there was money enough in this thing to make both of us rich if I would give him any information I possessed" must have, for discriminating jurors, relegated Lloyd to the lowest status of mercenary imaginable.⁶⁶

Weichmann's testimony, by comparison, unabashedly and directly linked John Surratt to the conspiracy charges as detailed in the indictment. According to Weichmann, Surratt was a major recruiter for Booth's activities having personally enlisted Atzerodt and perhaps Dr. Mudd. He frequently received telegrams and letters--more than one signed with an alias with which he [Weichmann] was familiar--from other members of the conspiracy. Other major participants in the conspiracy--namely Booth, Paine, and Atzerodt--called on John Surratt at the Surratt boardinghouse and he, in turn, called on them at their places of residence. According to Weichmann, Surratt seemed at times to toy with his dangerous avocation, playing with "bowie knives and revolvers" and flaunting the money that he was earning for his efforts. At other times, he took his role quite seriously as when he purportedly "struck [me] in the pit of the stomach" when Weichmann

⁶⁵ Ibid., 284-286.

⁶⁶ Ibid., 294.

jokingly took from him a ticket for a private box at Ford's Theatre on a night when Paine and John Surratt with their female companions were planning to use those tickets to reconnoiter the place. He often appeared to be serving as a liaison between the Confederate hierarchy in Richmond and their counterparts in Washington and Montreal. Weichmann also recounted the meeting some time in the winter of 1864-1865 between Surratt, Booth, and Dr. Mudd during which the three of them excused themselves from his presence for what they called "some private business"--either plotting an escape route as Weichmann would intimate or, to arrange for John Surratt to act as "the agent for the purchase of [Dr. Mudd's] farm"--as John Surratt would assure Weichmann.⁶⁷

Neither was Mrs. Surratt safe from Weichmann's testimony. If anything, he implicated her even further in his accounts of the conspiracy, describing her as a guardian of motives, actions, and identities. According to Weichmann, she reassured him--following the scene with Paine and her son on the bed with weapons--that John needed them for protection on his frequent rides in the country.⁶⁸ She wanted Weichmann to consider Booth's growing acquaintance with her son as nothing more than a result of John's running interference between Booth and the people of Charles County that Booth was constantly importuning for land. "[They] are getting tired of Booth and they are pushing him off on

⁶⁷ Ibid., testimony of Louis J. Weichmann, 371, 372, 374, 376, 377, 378, 380, 387.

⁶⁸ Ibid., 377.

John," she allegedly explained to Weichmann.⁶⁹ She also told Weichmann on one occasion that a stable operator they frequented ". . . considers John, Herold, and Atzerodt a party of gamblers and sports, and I want him to think so." On another occasion, "she appeared very angry" when Atzerodt confirmed to Weichmann that the "delicate gentleman" that John had put up at the Herndon House was, in fact, Lewis Paine.⁷⁰

Weichmann's account of the trips to Surrattsville were expanded as well, in particular the trip of 14 April and largely with additions to her dialogue, giving the jurors a feeling of malicious intimacy. Preparing to depart on their 14 April trip, Weichmann recalled Mrs. Surratt telling him to "Wait . . . I must get those things of Booth's."⁷¹ He described her as being cheerful on the trip to Surrattsville, but anxious about arriving back by nine o'clock "to meet some gentlemen there."⁷² Just outside Washington on the return trip, she allegedly inquired of some pickets posted there how long they might remain. When told that they would be leaving around eight o'clock, Weichmann claimed that she replied, "I am glad to know of it"--perhaps thinking of the safety of the fleeing assassins.⁷³ When later on they had drawn close enough to the city to witness the illumination celebrating the return of the United States flag at Fort Sumter, she

⁶⁹ Ibid., 372. Booth's interest in real estate was a front for making reconnaissance missions along the planned escape route.

⁷⁰ Ibid., 383-384.

⁷¹ Ibid., 390.

⁷² Ibid., 392.

⁷³ Ibid., 391.

allegedly was moved to make the ominous remark, "I am afraid that all this rejoicing will be turned into mourning and all this gladness into sorrow."⁷⁴ Later that night when government officers came looking for Booth and her son, Weichmann claimed that she confided that she "expected the house would be searched."⁷⁵ John Surratt's mother, according to the testimony of Weichmann, was no innocent or naive errand runner.

Whereas Lloyd practically cross-examined himself and thereby merited relatively little attention by the defense, Weichmann's memory and level involvement in the conspiracy underwent serious attack in cross-examination. Impeaching his ability to accurately recount relevant material, Bradley reminded Weichmann of his frequent inaccuracies with regards to dates of significant events--such as plays, introductions, trips, and first meetings--involving not only his client but other members of the cabal.⁷⁶

The defense then focused on raising doubts concerning Weichmann's assertion that he was never more than an intrigued outsider to the activities at the Surratt boardinghouse. He admitted--but only with several mitigating disclaimers --to having learned a cipher from a Confederate blockade runner who frequented the Surratt house.⁷⁷ He denied ever having taken information about prisoners of

⁷⁴ Ibid., 392.

⁷⁵ Ibid., 393.

⁷⁶ Trial of John H. Surratt, 410-418, 424-426.

⁷⁷ Ibid., testimony of Louis J. Weichmann, 441. He claimed that not only did he not know that it was a Confederate cipher but that his only use for it had been to write "the first two sentences of [a] Longfellow poem."

the War Department where he worked, but did admit to having said something once about his work to the aforementioned blockade runner. He further admitted to having personally placed the package containing the field glass in the bottom of the buggy prior to the trip to Surrattsville, but claimed no knowledge of its contents, saying that it "felt to me like three or four saucers wrapped up together; like a glass desert dish."⁷⁸

The last attempt by the defense to impeach Weichmann involved a series of accusations chiefly concerning his past relationship with the United States government and his testimony about Mrs. Surratt in the 1865 trial. Regarding his role as an informer, he denied that the government had ever threatened to hang him if he did not cooperate with them and that he had ever told authorities that he had suspected "something was going on" at the Surratt house. Regarding his performance at the 1865 trial, he denied that he had said that "he would have given a very different testimony if it [had] not been for that which was written down for [him]" or that he had ever sworn that he "could have given an explanation of Mrs. Surratt's visit to Surrattsville on the 14th of April which would have been greatly in her favor if he had been allowed to." He further denied that his current appointment in Philadelphia had been a gift for his testimony and that he had been relieved from his most recent job for having opened drawers to which he had no authorization. Continuing, he denied that he had ever considered himself arrested when because of his intimate knowledge of the activities at the Surratt boardinghouse he had been assigned to help track down

⁷⁸ Ibid., 447.

Surratt and other conspirators. He considered his association with the other officers as more a form of protection and, in fact, thought himself "as much of a detective as McDevitt (one of the other detectives) was." He even remembered being designated as a "special officer."⁷⁹

Although the defense had taken the edge off Weichmann's overall effect on the jury, John Surratt would later admit to the residual damage that Weichmann left behind. Assured of the fact that Weichmann knew the exact extent of the damage he was causing, Surratt would state that he was convinced that ". . . if [Weichmann] was on his death-bed he would send for me and ask my forgiveness for the ruin and trouble he has caused me." Assured also of his powers of conviction and righteousness, Surratt would also claim that if only once he could have caught Weichmann's eye during the trial, his perjury would have ended.⁸⁰

Dr. Lewis J. A. McMillan, similar to Lloyd in that complicity to some degree seemed apparent after his session on the witness stand, nevertheless served as one of Surratt's chief accusers. Whereas the jury may have been negatively affected by his admission that he had helped Surratt find lodging in Liverpool, that he had reached an agreement with Surratt to "bring him remittance of money from Canada," and that he had expected a reward for his original services, his testimony was highly charged and gave critical insight into Surratt's evolving

⁷⁹ Ibid., 422-424, 441-442, 450, 456.

⁸⁰ Washington Post, 3 April 1898.

mental state.⁸¹ "Nervous and careworn" when McMillan first met him on board the *Peruvian*, Surratt's confidence grew as the voyage put more distance between him and American authorities.⁸² It was not long, according to McMillan, before Surratt shed all pretense of caution and began to reveal details of his complicity. "He was quite free [and] seemed to be overflowing with the subject," testified McMillan.⁸³ Surratt had freely admitted to him that the abduction plot was "concocted entirely by John Wilkes Booth and himself" and that he had joyously responded to news of Lincoln's assassination while in a train depot somewhere in New York with the words: "Oh, the story is too good to be true."⁸⁴ Surratt's outlook on the future, at times rather bleak, was, nonetheless, accurate. He told McMillan at one point, in fact, that he "would rather be hung by an English hangman than by a Yankee one, for I know very well if I go back to the United States I shall swing."⁸⁵

Addressing alleged predisposition to violence, McMillan reiterated Surratt's alleged threat to President Johnson and detailed two new and chilling occurrences about Surratt that may not have seemed out of character to a public that expected the worst from him. While arguably irrelevant to the case, testimony was permitted alleging one incident in which Surratt and others indiscriminately killed

⁸¹ Trial of John H. Surratt, testimony of Lewis McMillan, 476, 481-483.

⁸² *Ibid.*, 474.

⁸³ *Ibid.*, 480.

⁸⁴ *Ibid.*, 476, 472.

⁸⁵ *Ibid.*, 468.

"five or six Union soldiers or prisoners" following a woman's taunt that they ". . . shoot the damned Yankee soldiers" and another similar incident in which Surratt and others fired on a surrendered gunboat in the Potomac River.⁸⁶ The prosecution's strategy--perhaps aware that the defense planned to establish an alibi for their client--also addressed Surratt's pre- and post-assassination activities in New York and Canada. An array of witnesses traced the defendant's activities in Montreal and his suspected escape route from Washington, with special attention paid to the dates of Surratt's departures and arrivals. It was shown that Surratt could not have departed Washington by early train on the morning following the assassination because all departures were delayed on the orders of General Christopher C. Augur, commander of the Union forces in the Department of Washington.⁸⁷ The register for the St. Lawrence Hotel in Montreal was then produced to demonstrate that there was a significant gap from 6 April 1865 to 18 April 1865 in John Harrison's [Surratt's alias] occupancy there.⁸⁸ The bookkeeper from the same hotel narrowed the gap somewhat when he demonstrated that Surratt had paid his bill on 10 April, but did not check out until 2:45 P.M. on 12 April.⁸⁹ A conductor for the Vermont Central Railroad then recounted an incident occurring between 10 and 20 April 1865 allegedly involving Surratt--who feigned a Canadian accent and occasionally slipped out of

⁸⁶ Ibid., 466-468.

⁸⁷ Ibid., 524-525.

⁸⁸ Ibid., 514.

⁸⁹ Ibid., 166.

it--and a second rough-looking man. They both claimed to be "destitute," and that if permitted to ride on credit, they would pay what was due upon their arrival in Canada.⁹⁰ Somewhat supporting this testimony as well as standing on its own as an apparently significant piece of evidence, Charles H. Blinn alleged to have found a handkerchief marked "J.H. Surratt, 2" at the Burlington, Vermont train depot on the morning of 18 April. It was discovered where two men, one tall and one short, had been given permission to sleep.⁹¹

With all major evidence presented, the prosecution had only to fill in several inconvenient holes in their testimony and to give the jury additional conspiratorial evidence on which to ruminate. Utilizing the same tactic employed so successfully in the conspiracy trial, the prosecution made no attempt to disguise its efforts to present emotional and speculative evidence. John Surratt's resignation from his job at Adams Express Company on or near 13 January 1865 was presented in this light. In the eyes of the prosecution's attorneys, Surratt must have resigned in order to free himself for the first abduction attempt. They dismissed outright his claim that "his mother was going down to Prince George's, and he wanted to accompany her as her protector."⁹² Even Lincoln's son Thomas made an appearance. He claimed that in March 1865 at City Point, the defendant had attempted to get aboard the steamer on which his father was travelling. One can only imagine the effect on the jury of the slain president's son testifying that

⁹⁰ Ibid., 168-171.

⁹¹ Ibid., testimony of Charles H. Blinn, 174.

⁹² Ibid., 436-437.

the alleged conspirator Surratt "wanted to see him real bad." The persistent Surratt, according to young Lincoln's testimony, ". . . tried twice, I believe, to pass in."⁹³ As evidence of Surratt's intimacy--albeit of a non-criminal nature--with other conspirators, several Washington stable workers testified that John Surratt presented them with notes or with verbal assurances that Atzerodt or Booth could use his horses if they wished.⁹⁴ Finally, as evidence of the viciousness of the conspiracy with which Surratt had been allegedly involved, several witnesses including several members of the Seward household recounted the details of Paine's slashing attack on Secretary of State Seward that left the entire Seward home in shock.⁹⁵ With the presentation of these witnesses, the prosecution rested its case. It had demonstrated to some degree all four of Wilson's claims regarding Surratt--presence, aiding and abetting, companionship, and treason--made in his opening argument. Now John Surratt's defense team would have a benchmark from which to start its case.

In his opening statement for the defense, the senior Bradley listed the evidence from the prosecution's case that he and his team planned to contradict with "countervailing testimony," thereby demonstrating their client's innocence. They would demonstrate, in fact, that their client "did not go near Washington, that he was not within four hundred miles from Washington at any time after he came to Montreal on the sixth of April, until he was brought here on the

⁹³ Ibid., testimony of Thomas Lincoln, 525.

⁹⁴ Ibid., 216-217.

⁹⁵ Ibid., 247-265.

Swatara."⁹⁶ They also planned to show that their client did not--as the prosecution had phrased it--"[weave] his web, as would a spider" between Montreal, Washington and Richmond, but had, on the contrary, been only an occasional visitor to the Confederate capital.⁹⁷ The defense also planned a major counterattack on the salient points in both Weichmann's and Lloyd's testimony, demonstrating in the process, that John Surratt had not been a principal in the assault on President Lincoln.⁹⁸ Another phase of the defense plan was to create as much distance as possible between their client and the other conspirators. They claimed that they would demonstrate that their client "had no communication with any of the parties who were charged with this offense" and that once having been secreted in Canada he had, in fact, been "prevented by force from returning to the city of Washington to surrender himself."⁹⁹

Just as the prosecution had established John Surratt's presence at Ford's Theatre both during the afternoon and evening of the assassination with an array of witnesses, the defense countered with a series of witnesses designed to create reasonable doubt in the jury about his alleged presence there. His sighting during the afternoon was called into question first by Ford's Theatre owner John T. Ford himself, who contradicted testimony alleging that it was possible for anyone--such as Surratt--to have simply walked into the theatre during the afternoon of the

⁹⁶ *Ibid.*, 542.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, 534.

⁹⁹ *Ibid.*, 542.

assassination. Ford testified that "The doors leading to the vestibule into the theatre are always closed . . . it was an inflexible rule."¹⁰⁰ Another Ford family member, stating that he himself had prepared the presidential box for Lincoln's visit, swore that he had seen no stranger in the theatre from two until three o'clock--the time when, according to the prosecution's testimony, Surratt supposedly was there.¹⁰¹ Another witness claimed that it was the costumer at Ford's Theatre who had announced that "it was ten minutes past ten"--a quote attributed by the prosecution to John Surratt on the night of the assassination.¹⁰² Yet another witness, a performer at the theatre, testified that it had been he who had been interested in knowing the time that night because he was scheduled to sing a "national song" for the president and wanted to know how much time he had to prepare.¹⁰³

Having effectively challenged Surratt's presence at Ford's Theatre, the defense now attempted to cast doubt on his presence in Washington on 14 April. Judging from the amount of time invested in countering Benjamin W. Vanderpoel's testimony, it must have been considered by Surratt's attorneys as having the greatest potential for damage. It had been Vanderpoel who claimed to have seen Surratt in company with a "thick set, dark-complexioned man . . . [who] had a foreign appearance about him" in a "place" near Ford's Theatre on the

¹⁰⁰ Ibid., testimony of John T. Ford, 545.

¹⁰¹ Ibid., testimony of James R. Ford, 553.

¹⁰² Ibid., 557.

¹⁰³ Ibid., 565.

afternoon of the assassination.¹⁰⁴ No fewer than ten witnesses--ranging from a policeman covering the Ford's Theatre district to several witnesses from the Metropolitan Hotel, a place that fit Vanderpoel's description--explained that Vanderpoel must simply have been geographically or chronologically mistaken.¹⁰⁵

Sergeant Dye's highly incriminating narrative of his encounter with Mrs. Surratt after leaving Ford's Theatre became an object of attention for the defense as well. Whereas Dye would have the jury believe that he spoke with Mary Surratt on his way back to his camp following the events at the theatre, the defense demonstrated that in all likelihood Dye had spoken to a neighbor of the Surratt's whose structurally similar house was in their neighborhood. Having read Dye's testimony in *The Evening Express*, the neighbor recalled remarking to her friends: "Here is either a misrepresentation or a very strange coincidence. This conversation, now purporting to come from another, certainly occurred at my house."¹⁰⁶ This testimony, along with that of Mary Surratt's next door neighbor who claimed to have been sitting in front of his house smoking from ten to eleven o'clock in the evening and that while there he had heard no conversation, effectively countered Dye's claim of a late night incriminating discourse with Mrs. Surratt.¹⁰⁷

Continuing with its strategy of removing Surratt from the scene of the

¹⁰⁴ Ibid., testimony of Benjamin Vanderpoel, 240, 243.

¹⁰⁵ Ibid., 632, 635, 638, 783.

¹⁰⁶ Ibid., 665.

¹⁰⁷ Ibid., 585-587.

crime, John Matthews, actor at Ford's Theatre, testified to an incident that would help to distance Surratt from criminality as well. Matthews swore that on the afternoon of 14 April, Booth, in an agitated state, had given him a letter addressed, "Editor, *National Intelligencer*" to be delivered on the next day. Its contents, never read by anyone but Matthews who swore that he afterwards burned the letter, revealed Booth's plans for Lincoln's murder and his motives for doing so. Allegedly, Booth, closing the letter and apparently without remorse, did what Jim Bishop labels "a mean thing; an ignoble thing," he signed it "J.W. Booth-Paine-Atzerodt-Herold," incriminating them all with one sweep of the pen.¹⁰⁸ Significantly for the Surratts, neither one of their names, according to Matthews, had been included in Booth's testimonial. Pierrepont made quick work of this potentially mitigating circumstantial evidence. Judge Fisher, convinced by Pierrepont of its inadmissibility, remarked, that "It might have been the very object of conspirators to thus screen some of the parties to the conspiracy by getting up this agreement."¹⁰⁹ Pierrepont next attacked Matthews himself, forcing him to admit in cross-examination that he had not wanted the 1865 military commission to know of the incident with Booth because he "had understood that persons who had been speaking with him on that day had been interrogated."¹¹⁰

Having earlier called John Surratt's presence in Washington, D.C. into question, the next step for the defense was to demonstrate his presence elsewhere

¹⁰⁸ Bishop, The Day Lincoln Was Shot, 160.

¹⁰⁹ Trial of John H. Surratt, 822-824.

¹¹⁰ *Ibid.*, testimony of John Matthews, 826-827.

in order to account for his rather lengthy absence from the St. Lawrence Hotel in Montreal. The revelations made by the next few witnesses not only adequately satisfied that strategy but, in so doing, caused such consternation among the prosecution that they decided to change their strategy mid-trial. A series of Elmira, New York merchants and tailors testified that on 13-15 April 1865, Surratt, wearing a belted, pleated Garibaldi coat then currently in fashion in Canada, entered their establishments "to speak about getting a suit of clothes" and to purchase some shirts.¹¹¹ Another witness, Dr. Augustus Bissell, claimed to have had a conversation with Surratt on 14 April at the Brainard House in Elmira. His detailed descriptions of Surratt's attire and especially of his facial hair were quite accurate.¹¹² Bissell's testimony, however, came under severe attack due to his admission that being a physician was merely a "secondary matter." "Speculating" on ventures such as the chamber pot business and a combination bar-pharmacy currently attracted most of his attention.¹¹³

This groundwork for an alibi was then strengthened by the testimony of employees at the Webster House in Canandaigua, New York, who produced the register for the hotel showing that Surratt--using the name John Harrison--was on their register for 15 April.¹¹⁴ The import of this moment was not lost on the

¹¹¹ Trial of John H. Surratt, 723-732, 738-744. See Anon., "A Remarkable Lecture," Lincoln Herald, 32, for Surratt's 1870 Rockville, Maryland speech during which he refers to this jacket, saying that he bought it at St. Albans to pass himself off as a Canadian.

¹¹² Trial of John H. Surratt, testimony of Augustus Bissell, 888-890.

¹¹³ *Ibid.*, 863-871.

¹¹⁴ *Ibid.*, 761.

defendant. Surratt later alluded to District Attorney Pierrepont's becoming "exceedingly nervous, especially when Mr. Bradley refused to show [the register] to him . . . He evidently saw what a pitiful case he had, and how he had been made the dupe of his precious, worthy friend, Edwin M. Stanton."¹¹⁵ Pierrepont, apparently recovering, successfully argued that the register's inviolability and, thus, its admissibility, was highly questionable. "If such were allowed, any murderer, any assassin could acquit himself," Pierrepont claimed, by fabricating evidence in his own favor.¹¹⁶ Judge Fisher consequently disallowed the register. Surratt saw a silver lining even in this dark cloud. Commenting on Fisher's decision, he claimed that "had Judge Fisher been one of the lawyers for the prosecution, he could not have worked harder against me than he did. But thanks to him, he did more good than harm. His unprincipled and vindictive character was too apparent to everyone in the courtroom."¹¹⁷

In a parallel situation, the defense planned to subpoena the register at the Brainard Hotel in Elmira to demonstrate that Surratt had taken a room there on 14 April, but after a "very diligent" but unsuccessful search, the register could not be produced.¹¹⁸ Surratt had a comment for this development as well. It was "only a surmise of mine," he would later say, that "some judge high in position had it

¹¹⁵ "A Remarkable Lecture," Lincoln Herald, 31.

¹¹⁶ Trial of John H. Surratt, 767.

¹¹⁷ "A Remarkable Lecture," Lincoln Herald, 30.

¹¹⁸ Trial of John H. Surratt, 782.

stored away."¹¹⁹

Brigadier General Edwin G. Lee, described by his descendant Alexandra Lee-Levin as "Judah Benjamin's military attache and as the ranking Confederate officer in Canada," was slated to play a major role in establishing Surratt's alibi.¹²⁰ Judge Fisher, however, in response to a series of strident objections by the prosecution, would not allow anything of substance from Lee to be entered into evidence.¹²¹ This was a setback of major proportions for the defense. Regardless of any secondary effect on the jury, Lee's testimony was going to be used by the defense to establish John Surratt's location and specific activities on the day of the assassination. Allegedly, Surratt had agreed to go on a reconnaissance mission for Lee to "survey the Federal prison's situation [at Elmira] . . . [and] to ascertain as nearly as possible the number of persons who would be involved in a prison break. . . ."¹²² Surratt himself claimed to have bribed a Union colonel, "suffering from a chronic case of 'deadbroke'" into passing him into Elmira's fortifications.¹²³ Surratt further claimed that one of his attorneys threatened to resign if Surratt did

¹¹⁹ "A Remarkable Lecture," Lincoln Herald, 30.

¹²⁰ Alexandra Lee Levin, "Who Hid John H. Surratt, The Lincoln Conspiracy Case Figure?" Maryland History Society Magazine 60 (June 1965): 177.

¹²¹ Trial of John H. Surratt, 780-781.

¹²² Alexandra Lee Levin, "This Artful Drama: Gen. Edwin Gray Lee, C.S.A. and His Family," unpublished paper in Surratt Society files, 153. For details on the conception and evolution of the plan to release prisoners from Elmira prison, especially the part to be played by General Edwin Lee, see William A. Tidwell with James O. Hall and David Winfred Gaddy, Come Retribution: The Confederate Secret Service and the Assassination of Lincoln (Jackson: University Press of Mississippi, 1988), 278-281.

¹²³ Washington Post, 3 April 1898.

not reveal the name of the colonel who let him into prison. Surratt closed the incident with an explanation that begs analysis: "It would have ruined him, although it would have caused my acquittal."¹²⁴ Significantly, this would not be the last time that this testimony's admissibility would be discussed.

McMillan's testimony became the next target. Stephen F. Cameron, an ex-Confederate Secret Service agent who had made the Atlantic crossing with McMillan and Surratt, was utilized to impugn McMillan's character and to gain a measure of sympathy for the defendant. McMillan, according to Cameron, had been told by Surratt about being in Elmira on 14 April and about his first learning of the assassination on the morning of the next day.¹²⁵ In addition, Cameron remembered McMillan saying that he believed Surratt to be innocent, and, in fact, a victim.¹²⁶ Cameron's testimony concluded with his disclosure that McMillan had told him that Surratt's caretakers during the months he was in Canada did him inestimable injustice by keeping him so secluded that he was unaware of the critical nature of his mother's situation at the hands of the military commission.¹²⁷

The testimonies of Weichmann and Lloyd were also attacked. Largely

¹²⁴ Ibid.

¹²⁵ Trial of John H. Surratt, testimony of Stephen F. Cameron, 793, 794. See "A Remarkable Lecture," Lincoln Herald, 31, for Surratt's response to seeing his name in the newspaper as a suspect: "I could scarcely believe my senses. I gazed upon my name, the letters of which seemed sometimes to grow as large as mountains and then dwindle away to nothing."

¹²⁶ Trial of John H. Surratt, testimony of Stephen F. Cameron, 793, 794.

¹²⁷ Ibid., 813. See also Levin, "Who Hid?" 177, 179, for a claim by General Edwin Lee that "[only] force on the part of his guardians prevented him from returning to Washington and surrendering himself."

members of the Surratt boardinghouse, this group of witnesses also included relatives, friends of the Surratt family, and several police officers involved in the case. The Holahan family who resided at the boardinghouse in 1865 were indispensable in casting Weichmann and Atzerodt, in Mr. Holahan's words, "as intimate as friends would be," even sharing clothes on one occasion. In Holahan's recollection, Weichmann had considered himself to be "in custody" from the fifteenth to the eighteenth or twentieth of April and had, in fact, been "kept all night in the station house" following his return to Washington, D.C. from Canada.¹²⁸ A second witness, in fact, James A. McDevitt, verified Holahan's story regarding the arrest of Weichmann.¹²⁹

Significantly countering previous testimony, Holahan also testified to having taken several handkerchiefs from the Surratt house--one of which bore John Surratt's name--before heading north with Weichmann and several officers to search for John Surratt. He further claimed to have lost this particular handkerchief at the Burlington, Vermont train station on the night of 19 April.¹³⁰

Weichmann's mental state came under attack as well. Lewis Carland stated that Weichmann had confided to him that he was "very troubled" following his presentation of testimony at the conspiracy trial that had been prepared for him by the "parties who had charge of the military commission." According to

¹²⁸ Trial of John H. Surratt, testimony of John Holahan, 669.

¹²⁹ *Ibid.*, 711. To Weichmann's credit, McDevitt was forced to say that, "Mr. Weichmann . . . went with me willingly in pursuit of the assassins, and was zealous and earnest in performing the part allotted to him in the pursuit, and although he had every opportunity to escape he did not."

¹³⁰ *Ibid.*, 669-686. Holahan's wife would corroborate this.

Carland, Weichmann had asked Carland to go with him to church to confess because "his mind was so burdened with what he had done." Returning, and significantly in Carland's opinion, Weichmann then performed Hamlet's "Soliloquy on Death" for him. It was in light of Weichmann's apparent anxiety that Carland consequently decided to avoid him in the future, considering him, in addition, to be "a dangerous man."¹³¹ Another witness provided details that in all likelihood and, if true, led to Weichmann's troubles. He claimed to have overheard an officer of the government tell Weichmann, under threat of hanging, that he needed to testify more than he had already done.¹³²

Since John Lloyd did such an admirable job of calling his own trustworthiness into question, the defense went to no great lengths to further impugn him. John Clarvoe, called to the stand to challenge him, stated that Lloyd had told him that no one could have possibly passed his place on the night of the assassination because he had been up all night--sober, and that Lloyd had intentionally tried to mislead a party searching for Booth and Herold by sending them the wrong way.¹³³

Winding down its case, the defense utilized the testimony of various and sundry employees of railroads operating between Washington and New York to demonstrate that Surratt could not possibly have been in Washington on 14 April

¹³¹ Ibid., testimony of Lewis Carland, 814, 816, 818.

¹³² Ibid., 820.

¹³³ Ibid., testimony of John Clarvoe, 701-702.

and subsequently in Elmira on the same day or even the next day.¹³⁴ Finally, with its attacks on the veracity of several key prosecution witnesses, the defense closed its case.¹³⁵

It was obvious that the defense had done some serious damage to the prosecution's case. During the prosecution's rebuttal phase, in fact, the prosecution no longer bothered to argue Surratt's presence in Elmira. Admitting rather that he had been there, they now argued that he could still have arrived in Washington by train in time to participate in the assassination. In addition, since the prosecution felt itself wavering in its ability to substantiate Surratt's whereabouts on 14 April, they pushed for a "doctrine of constructive presence." That is, they claimed that even his alleged presence in Elmira was a part of the overall plot--specifically, a role of distraction and confusion.¹³⁶ To that end, other than to call several dozen character witnesses to attack or defend the veracity of previous defense witnesses, the remainder of the prosecution's rebuttal was comprised of an array of railroad personnel and ferry operators who testified that by means of a bewildering combination of connection and non-traditional routes or modes of transportation, the possibility existed for Surratt to have arrived in

¹³⁴ Ibid., 769-778.

¹³⁵ The defense obviously considered some witnesses' testimony far more damaging than others if one may judge from the number of witnesses who were called at this point to besmirch their character: John Lee (14), Cleaver (10), Ste. Marie (2), and McMillan (1); for an especially amusing badinage between Pierrepont and a witness in cross-examination, see Trial of John H. Surratt, testimony of Benjamin J. Naylor, 627.

¹³⁶ Turner, Public Opinion, 233.

Washington by the morning of 14 April.¹³⁷ At least one attorney for the prosecution, Pierrepont, seemed unshaken by the implications of the Elmira alibi. Brimming with confidence, he claimed that "[if] he did not demonstrate, when he came to review the evidence in the case as is now in, not only that [Surratt] was not in Elmira, but that he was in the city of Washington on the 14th, and nowhere else, he would pledge himself never to try another case as long as he lived."¹³⁸

The defense, for its part, must have been pleased with its efforts at this stage. After all, their witnesses had established an alibi strong enough to warrant a drastic change in the prosecution's confidence if not its strategy. Bradley, sensing this, pushed even further following the termination of his rebuttal. He especially attacked the prosecution for its breach of protocol regarding its belated use of the constructive presence tactic.

"[The prosecution] were bound now by every consideration of justice, by every rule of evidence, by everything which can bind a government to put the citizen on his guard against false accusations, to introduce their evidence in chief, and not to wait to introduce it in rebuttal of evidence offered by the defense to meet the case made in chief."¹³⁹

In addition, Bradley seethed over the prosecution's current efforts to have admitted as evidence--in support of the conspiracy charge--the information concerning the prisoner release at Elmira that the prosecution themselves had previously been successful in having barred.¹⁴⁰

¹³⁷ Trial of John H. Surratt, 916-930, 935-940, 950-952.

¹³⁸ *Ibid.*, 1038.

¹³⁹ *Ibid.*, 1039.

¹⁴⁰ *Ibid.*

Continuing, Bradley now challenged the linchpin of the prosecution's entire case. Bradley's discourse on the interconnection between railroad timetables and the alleged sightings of Surratt in various places on the days immediately prior to and following the assassination was succinct and biting. As a court recorder remembered his attack, "[he] defied human ingenuity to weld a chain out of the proof [the prosecution] had, that would bring the prisoner from Elmira to this city on the morning of the 14th of April . . . unless there had been some new discoveries in arithmetic."¹⁴¹ Continuing, and exaggerating for effect, he demanded to know if "the telegraph was to be used . . . to [show] that the prisoner came here . . . for they could get him here no other way."¹⁴² Gaining confidence as he proceeded, Bradley even went so far as to propose that the case be given over to the jury without closing arguments by either side or, that failing, to forego the option of a closing statement by the defense even if the prosecution chose to make one.¹⁴³

Before proceeding to closing statements, there remained only for Judge Fisher to decide whether the court would let stand or strike previously challenged evidence. A motion by the defense to dismiss testimony concerning Paine's attack on William Seward was denied despite Bradley's argument that "the evidence must tend to show either that the party charged committed the act himself, or participated in the commission of it, or was rendering aid or assistance, or was at

¹⁴¹ Ibid., 1040-1041.

¹⁴² Ibid.

¹⁴³ Ibid., 1042. He did, however, reserve the right to respond if he saw fit.

such convenient distance that he could have rendered aid or assistance"--all of which Bradley felt he had demonstrated to the contrary.¹⁴⁴ Fisher also denied a defense motion to strike the testimony regarding Surratt's alleged shooting of Union soldiers. Bradley had argued that the attack, even if true, did not prove anything about Surratt's feelings toward Lincoln; Pierrepont, countering Bradley, argued--more successfully it would seem--that this evidence was necessary to their case to demonstrate Surratt's predisposition to this type of behavior.¹⁴⁵ Motions to strike evidence concerning telegraphic communication between Elmira and Washington, a certain letter allegedly linked to the assassination, and Surratt's connection with Confederate covert operative Jacob Thompson and convicted conspirator George Atzerodt, however, were successful.¹⁴⁶ On balance, it would seem that the prosecution gained the most from this exchange.

Closing arguments, in addition to providing the traditional opportunity for summation and clarification, served, in this case, to heighten the already keen state of anxiety. The closing statements for all attorneys became a forum into which they might reach beyond the confines of exhibition and interrogation and enter the realm of rhetoric where they all excelled. Carrington's role for the prosecution was chiefly to address the principles of law on which their case had been founded. With a sweeping introductory statement that "[the] gallows upon which [Mary Surratt] expired should have been [her son's] throne," both the tone

¹⁴⁴ Ibid., 1060.

¹⁴⁵ Ibid., 1069, 1063.

¹⁴⁶ Ibid., 1072.

and direction of Carrington's summary was established. He first proceeded to deny Surratt the loophole of accessory by arguing that he had committed an "overt act," thus making him a principal in the second degree.¹⁴⁷ He then bolstered the constructive presence strategy, citing in particular an argument from the Aaron Burr conspiracy case wherein it was stated that the party "who performs any part in the general plan, however minute or however remote from the scene of action, is constructively present."¹⁴⁸ Impersonating John Surratt, Carrington next presented a sarcastic interpretation of the defense's argument that their client had never been party to the assassination.

I only intended to insult, assault, kidnap, abduct, and imprison the President of the United States and turn him over kindly and gently to the tender mercies of traitors and rebels in arms, who were waging a fierce and cruel war against the nation's life, whose hearts were filled with malice and whose hands were reeking with innocent blood. I only intended to insult the American nation. I struck at the nation's heart, but missed my aim and only killed a man . . . it was nobody but Abraham Lincoln, and my sister says it was no more to kill him than any negro in the Union army.¹⁴⁹

Moving on to the conflicting testimony concerning Surratt's presence in Washington on 14 April, Carrington resorted to a metaphorical comparison. Explaining that "the burden of proof to establish an alibi is by the preponderance of evidence," Carrington demonstrated the prosecution's quantitative edge in that area: "They (the defense) bring up three men (i.e., witness); I send forward three champions to meet them. They die together. I have got a regiment of ten behind

¹⁴⁷ Ibid., 1081.

¹⁴⁸ Ibid., 1088-1089.

¹⁴⁹ Ibid., 1092.

and victory perches upon my banner."¹⁵⁰ Carrington also made it perfectly clear that the defense had not effectively shown that Surratt "retired from the conspiracy and discharged himself from all obligations of their acts." Evidence, in fact, such as McMillan's, had demonstrated that he "gloried in his achievements of crime."¹⁵¹ The District Attorney's final words to the jury addressed their ultimate duty: " . . . [You] must be cruel to be kind. He is a murderer, and deserves a murderer's doom."¹⁵²

Counselor Merrick had the honor of presenting the first of two consecutive closing statements by the defense. He began by boldly stating that he and his team had from the beginning of the trial realized that they were competing not only against the prosecution "that represents the government in its assumed offended majesty," but against another more subtle force "that represents some officers of the United States seeking for their own purposes the shedding of innocent blood."¹⁵³ One might argue that a third force, discretion, gained the upper hand for the moment because for some reason Merrick decided not to further that dangerous premise. Proceeding, and taking as cue perhaps from Carrington's mocking impression of John Surratt, Merrick then summarized the prosecution's view on their own strategy:

We cannot place in his hands a telescopic rifle that will reach from Elmira to Ford's Theatre. . . . [As] our next best chance, we must go to his honor

¹⁵⁰ Ibid., 1047.

¹⁵¹ Ibid., 1148.

¹⁵² Ibid.

¹⁵³ Ibid., 1156.

and tell him that to murder a President is like murdering a King; that it has no accessory, that wherever Surratt was, he is guilty of the murder; and we will further tell his honor that he dare not decide differently, that the voice of the people demands the decision.¹⁵⁴

Following this introduction, the bulk of Merrick's closing statement was presented in the form of challenges to the prosecution. If Surratt were guilty of treason, he demanded to see the witnesses as required by the Constitution. If Surratt was an accessory, he demanded to know how--due to their exclusionary nature--his client could be a principal as well. If the prosecution meant to charge that Surratt, while in Elmira, participated in the murder, he demanded to see any mention of that charge in the indictment. If Surratt was an active member in the conspiracy after 12 April, he demanded to see evidence of it. If, by some "novel specimen of jurisprudence," Surratt was responsible for the acts of his associates, Merrick demanded to know why the prosecution had not "indict[ed] him at once as a corporate body."¹⁵⁵

Merrick, concluding with a reference to Mary Surratt and clearly addressing the prosecution, clarified who was to blame for her presence in the court.

You have broken the cerements (graveclothes) of that grave; You have brought her before the jury; now close those cerements if you can. She sits beside [her son] and covers him with a wing you can never shut. . . . We had not said one word to this jury about her, but in bringing her before them you disclosed your plan. . . . You may bid the spirit down now, but it will not down.¹⁵⁶

¹⁵⁴ Ibid., 1161.

¹⁵⁵ Ibid., 1165-1166, 1167, 1177, 1200, 1164.

¹⁵⁶ Ibid., 1194.

John Surratt's flight and the implications that the prosecution had attached to it provided Merrick with the opportunity to indict the inquisitional system that had caused Mary Surratt's death. "What else could he do?" asked Merrick of the jury. "Suspicion of guilt in that day was certainty of conviction. Military commissions were organized, not to try, but to condemn . . . He fled not from justice, but from lawlessness."¹⁵⁷ A rather simple request concluded Merrick's statement: "Gentlemen of the jury, I invoke for the prisoner, not your mercy, but your most deliberate judgement."¹⁵⁸

Joseph Bradley, Sr., making the second of the two closing statements for the defense, spent a remarkably brief period of time with the jury. Speaking in quite broad terms, he began by dismissing the first three counts of the indictment outright because, as he claimed, they involved a murder for which his client had not been present.¹⁵⁹ Using as a springboard his demand to know where in the indictment was the prosecution's assertion of Surratt's whereabouts if he was not in Washington, he then launched into a semantic attack on the indictment itself. He explained that any such omission as Surratt's supposed whereabouts "vitiates the indictment, and the defendant may avail himself of [that oversight]."¹⁶⁰ He then drew attention to the fact that according to the indictment and despite any cherished feelings that the jury may have had toward President Lincoln to the

¹⁵⁷ Ibid., 1211.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid., 1220.

¹⁶⁰ Ibid., 1272.

contrary, his client had been charged with the murder of a private individual, not, as the prosecution had alleged, someone of any particular "name or dignity."¹⁶¹

Bradley's final tactic was to challenge the prosecution to cite a precedent for their mid-trial change of allegations to one of constructive presence. "Where are the sources, the authorities for this unique act of legal chicanery?" he asked. "No authority has been cited, not a hornbook, not an elementary writer, not a county court decision."¹⁶² With that, Bradley's attack on the indictment was complete.

Whether by choice or by lot, Bradley responded next to a clever metaphor that the prosecution had used to demonstrate their numerical superiority in witnesses that allegedly had seen Surratt in Washington. Obviously referring to the intense character assassination to which he and his associates had subjected the prosecution's preponderance of witnesses, Bradley addressed the advantage of quality over quantity. "Gentlemen," he posed to the jury, "suppose you were to have four pounds of pure gold in one scale and thirteen of false, base metal in the other scale; it would be a much better comparison."¹⁶³

Bradley then charged the jury to make a swift decision to acquit, "that this young man may not go forth to the world with any doubt resting upon him by long deliberation." His final charge--an unusual but not totally unexpected one considering the spiritual presence of Mary Surratt throughout the trial--was a bid

¹⁶¹ Ibid., 1273.

¹⁶² Ibid., 1227.

¹⁶³ Ibid., 1237.

to acquit Mrs. Surratt retroactively as well.¹⁶⁴ Convinced of a conspiracy, the defense took the opportunity to accuse the government of having withheld information that would have saved Mary Surratt's life. Specifically, the defense referred to the absence of President Johnson's executive clemency plea in the published transcript of the 1865 trial which the government had claimed was included.¹⁶⁵

The prosecution, according to court protocol, would have the last words with the jury before the judge's instructions were given to them. Pierrepont's role, requiring the thoroughness of an historian without the nagging demands of historical objectivity, was to present a unified and cohesive version of all the facts as the prosecution saw them. In addition, he made it clear that this case would not, if he could help it, be viewed as the murder of "the humblest vagabond," but as the assassination of a president.¹⁶⁶

Pierrepont began his reconstruction of John Surratt's criminality with the entering of his name on the register of the St. Lawrence Hotel on 18 April, 1865-- a fact with which he considered every other truth to be in harmony. From this benchmark, he could proceed both forward and backward in time to encompass all of the defendant's conspiratorial activities. Working forward, he reminded the jury of Surratt's Canadian, European and North African sojourns and mused over

¹⁶⁴ Ibid., 1246.

¹⁶⁵ Ibid., 1368.

¹⁶⁶ Ibid., 1263.

why an innocent man would take flight.¹⁶⁷ Starting then with 13 January 1865, Pierrepont began piecing together every shred of the prosecution's evidence into a mosaic of John Surratt's culpability. Introductions to and meetings with other members of the cabal, the arrivals and departures at both the Surratt boardinghouse and Lloyd's Surrattsville tavern, and, of course, the events in Washington, D.C. on 14 April were presented in a sequential fashion and enlivened with quotations attributed to Surratt, his mother, and others.¹⁶⁸

The closing of the prosecutor's case must have left quite an impression on the jury. Not able to let the defense's accusation of conspiracy regarding Mary Surratt's clemency plea go unchallenged, Pierrepont counterattacked. Rather than with a verbal rejoinder, however, he produced trial papers from the 1865 military commission that, upon examination by the defense, demonstrated to the court that not only was the commutation plea contained in the trial record, but that it had not been acted upon by President Johnson.¹⁶⁹ He closed simply by admonishing the jury to ask for divine guidance in making their decision.¹⁷⁰

During Joseph Bradley's summation, he had cautioned the jury both to listen closely to Pierrepont's closing statement and to heed the judge's summary.¹⁷¹ Following Fisher's highly prejudicial pronouncements, Bradley probably would

¹⁶⁷ Ibid., 1254-1257.

¹⁶⁸ Ibid., 1265-1363.

¹⁶⁹ Hoehling, Post-Appomattox, 294. Hoehling adds: "Holt hurried over later in the day to reclaim [the trial record]."

¹⁷⁰ Trial of John H. Surratt, 1366.

¹⁷¹ Ibid., 1246.

have liked to retract that directive. Fisher's instructions to the jury were, in fact, responsible for Gideon Welles' 9 August diary entry which contained the remark, "The judge was disgracefully partial and unjust, I thought, and his charge highly improper."¹⁷²

Presented as a list of inferences to serve as guidelines for the jury's deliberation, Fisher's charge placed him squarely in the camp of the prosecution. With regard to Surratt's alleged criminal activity in the conspiracy that the defense had attempted either to downplay or dismiss, Fisher expounded on the magnitude of murdering the head of a government, schooled the jury on the concept of equally shared guilt by all members of a conspiracy, and explained that the prosecution, if they so chose, "may waive the charge of treason against any or all the conspirators, and proceed against them for the smaller crime of murder, included in the greater crime of treason."¹⁷³ Alluding to Surratt's alleged murder of Union soldiers and Paine's attack on Seward that had earlier been points of contention between the two parties in this case, Fisher reminded the jury that all evidence that tends to demonstrate the conspiracy's "heinous character" should be given proper consideration.¹⁷⁴ Citing the defense's attempt to invoke an overly strict interpretation of the indictment, Fisher pointed out that according to

¹⁷² Welles, Diary, 3: 166-167. Shelton, Mask for Treason, 92, similarly, sees Fisher and the prosecution team as "wholly subservient to the War Department." See also Eisenschiml, "A 'Study' of John Surratt?" 188, for a reference to the "depths of which the prosecuting attorney, the War Department, and judge stooped to bring about Surratt's conviction."

¹⁷³ Trial of John H. Surratt, 1377-1378.

¹⁷⁴ *Ibid.*, 1377.

"judicial cognizance," it was unnecessary for the prosecution to have either "alleged in the indictment [or] proved by witnesses" that Abraham Lincoln was President of the United States.¹⁷⁵

Casting aspersions on the defense's apparently successful attempt to establish an alibi, Fisher exercised no restraint. Addressing alibis and particularly the role played by railroads and timetables in building the alibi in this case, he explained that "this is a line of defense always held in little favor by the courts and juries" because it is easily propped up by perjury, and because the time elements not only are easily mistaken, but "have become almost annihilated by modern contrivances driven by the power and speed of steam."¹⁷⁶

Fisher's final stake into the heart of the defense's case was his statement on the "circumstances indicating guilt." He instructed the jury that "flight, fabrication of false accounts, [and] the concealment of instruments of violence"--all attributed to Surratt--were indicative of guilt and that a confession "free of favor . . . duress or fear [and] made freely and voluntarily"--as Surratt had done with McMillan--"is one of the surest proofs of guilt."¹⁷⁷ With these words ringing in their ears, the jury was dismissed to do its duty. As a footnote and perhaps a further indictment of the government's unwavering stance, a request by the jury foreman for a copy of the written evidence was considered reasonable by Bradley,

¹⁷⁵ Ibid., 1373.

¹⁷⁶ Ibid., 1374.

¹⁷⁷ Ibid., 1378.

objected to by Carrington, and disallowed by Fisher.¹⁷⁸

When, on 10 August 1867, the jury announced to the court that it had not been able to reach a verdict, John Surratt did not feel exonerated. The vote had been almost strictly along sectional lines--four Northern or foreign-born jurors voted to convict; seven Southern jurors with a lone New Yorker voted to acquit.¹⁷⁹ When Fisher asked the two parties whether there were any objections to his dismissing the jury, Bradley, speaking for Surratt, said that if they were dismissed, it was against his client's "will and protest." Fisher, sensing that further sequestering of the jury would produce no change, dismissed them and turned John Surratt over to the marshal.¹⁸⁰

Whereas in the aftermath of the 1865 trial, there were widespread allegations of witness tampering, perjury, and governmental obstruction, only one incident of any relevance transpired between the end of the trial and the initiation of further action against John Surratt. No sooner had the trial concluded, in fact, when, in a manner similar to the 1865 trial, certain irregularities regarding major participants came to light. Gideon Welles was present at a 13 August 1867

¹⁷⁸ Ibid., 1378-1379.

¹⁷⁹ Anon., Adventures of John H. Surratt, 135-136. For a unique assessment of the verdict, see James E.T. Lange and Katherine Dewitt, "The Three Indictments of John Harrison Surratt," an unpublished paper in the Surratt Society holdings, 1-2: "The mood of the country was still divided, and Lincoln was not yet universally enough admired to prevent Southerners feeling that the assassination may have been justified."

¹⁸⁰ Trial of John H. Surratt, 1379. See "Judge Fisher's order striking the name of Joseph H. Bradley, Sr. from the roll of attorneys practicing in this court," John Surratt Papers, 21/4731 for evidence that long simmering tempers must have flared immediately after the jury's dismissal. See also Turner, Public Opinion, 248, for details on Bradley's challenging Judge Fisher to a duel.

cabinet meeting when these developments were introduced. Secretary of State Seward laid before the cabinet a paper--"[a] curious document in some respects"--from Albert Gallatin Riddle of the prosecution team. Seward, according to Welles, was "disconcerted" at its disclosure and even more "annoyed" when the president had it read to the group. It "disclosed the fact that Riddle had been employed by Seward to hunt up, or manufacture, testimony against Surratt." Welles was at a loss. "Why the State Department should busy itself in that prosecution," he mused, "is not clear." Welles also found it odd that Riddle--along with Judge Advocate Holt and Congressman James M. Ashley of Ohio--had, according to the document before them, applied to the president for a pardon for Sanford Conover for "service rendered in the Surratt trial." After all, Riddle himself had clearly stated in the document before the cabinet that Conover "never gave the name of a single witness, never furnished him a solitary fact."¹⁸¹

Conover had apparently struck fertile ground with Congressman Ashley. A Radical Republican clamoring for impeachment proceedings against President Johnson, Ashley had fallen prey to Conover's tempting offer of information incriminating Johnson in Lincoln's death. Ashley had offered Conover, in return, his word to apply for Conover's pardon. The plan collapsed, however, amid squabbling over the blood money for Conover's alleged evidence and nothing of consequence appears to have resulted from it.¹⁸²

¹⁸¹ Welles, Diary, 3:170.

¹⁸² Gene Smith, High Crimes and Misdemeanors: The Impeachment and Trial of Andrew Johnson (New York: William Morrow and Company, Inc., 1977), 217-218.

From the evidence, it appears that Pierrepont took the initiative and began to prepare for a new trial. In a 31 December 1867 letter to the assistant Attorney General, Pierrepont commented on the semantics of the past indictment and suggested how it might be improved.

I thought the indictment against Surratt most excellently drawn--I did not see how it could be better. From intimations, however, which have been conveyed to me from one of the jurors since the trial, I wish to suggest whether an indictment can be formed so that the jurors can find the prisoner guilty as an aider and abettor of the conspiracy . . . The juror says they did not doubt the guilt, but they wanted to find some verdict which relieved them of the necessity of a verdict of guilty of "Murder"--whether we can accomplish this I am not prepared to say.¹⁸³

Exercising caution, Pierrepont pointed out to Secretary of State Seward on 18 May 1868 that after a thorough examination of the available evidence--Sergeant Dye, for example, could not be located--he thought it in their best interests to let the case carry over into the next term, "even if the prisoner was bailed."¹⁸⁴ With a realistic outlook on the current developments, he thought that "an acquittal on a trial now more than probable."¹⁸⁵

Joining the debate over a second indictment, Edward Carrington, in a letter to the Attorney General's office, agreed with Pierrepont that the case should be disposed of at the next Criminal Court term beginning on 15 June. He expressed great concern, however, that Judge Wylie, in contrast to his

¹⁸³ Edwards Pierrepont to Hon. John M. Binckley, 31 December 1867, Papers Relating to the Trial of John Harrison Surratt, Record Group 60: Judiciary/District and Circuit Court, Criminal Case File 5920, National Archives, Washington, D.C. (Hereinafter cited as John Surratt Papers, 60/5920.)

¹⁸⁴ Pierrepont to William H. Seward, 18 May 1868, John Surratt Papers, 60/5920.

¹⁸⁵ Ibid.

predecessor, Judge Fisher, would certainly rule that "in order to convict the prisoner of murder, the jury must be satisfied from the evidence that at the time the murder was committed, the prisoner was near enough to render physical assistance if called upon."¹⁸⁶ In addition, with "no hope of securing [Sergeant Dye's] attendance at the next term," the outlook for the prosecution seemed unpromising.

Rebounding with a new strategy, the prosecution "resolved to procure a new indictment for a minor offence [sic], and accordingly, at the June term the Defendant was indicted under the 2nd section of the act of July 17, 1862 for conspiracy to murder, to abduct, etc."¹⁸⁷ It was their plan first to postpone the case based on the murder indictment until the conspiracy to murder case had been presented, then "move to continue" the more serious case. When the defense objected, Carrington suggested that they "indict the prisoner for conspiracy [to murder] and enter a *nolle prosequi* (motion declining to prosecute) to the present indictment which charges him with murder." Ever mindful of public opinion, Carrington suggested that his plan would "avoid a long, tedious and expensive trial which would result either in an acquittal or another hung jury."¹⁸⁸

Undaunted by an exasperatingly non-committal response from the Attorney

¹⁸⁶ Edward Carrington to Attorney General's office, 9 June 1868, John Surratt Papers, 60/5920.

¹⁸⁷ Albert Gallatin Riddle to Seward, 9 October 1868, John Surratt Papers, 60/5920. See Indictment: United States vs. John H. Surratt, John Surratt Papers, 60/5920 for the full text of this second indictment.

¹⁸⁸ Riddle to Seward, 9 October 1898, John Surratt Papers, 60/5920.

General to a request for permission to proceed, or barring that, some guidance, Carrington continued with his efforts to convict. He even went so far as to "secure two separate indictments of Surratt from two separate grand juries on the treason charges."¹⁸⁹ He may never have been aware of the fact, however, that "the District of Columbia had a two-year statute of limitations on every crime but fraud or murder. The treason (conspiracy) indictment gave the last date of Surratt's offenses as of April 15, 1865 . . . and was not voted as a true bill until June 18, 1868, over three years later."¹⁹⁰ Judge Fisher had no choice. He dismissed the case and later dismissed, as well, an attempt to appeal his decision. The remaining treason indictment suffered a unique and ironic fate, according to one source.

On November 5, 1868, the Grand Jury [sic] foreman, knowing of the decision in the previous case, crossed out the words 'true bill' on . . . treason indictment #6594, and endorsed it '*ignoramus*,' meaning 'we ignore.' This [was] a fitting epitaph for the Government's [sic] efforts to prosecute John Surratt.¹⁹¹

¹⁸⁹ Lange and Dewitt, "Three Indictments," 3.

¹⁹⁰ Ibid.

¹⁹¹ Ibid., 4.

CHAPTER V

CONCLUSIONS

Neither a jury nor history has exonerated John Harrison Surratt. His activities during the waning months of the American Civil War, both in his official capacity as courier for the Confederate government and in his association with John Wilkes Booth's cabal, remain somewhat undefined and a matter of scholarly contention. His flight, capture, extradition, and trial, on the other hand, are well-documented and are thus open to greater scrutiny and more accurate assessment.

His mother's trial by a military commission differed from his own eventual trial in its adjudicatory format, the scope of the context within which the cast was set, and the inclusion of treason in the indictment. Far more significant for this study, Mary Surratt's trial and her exploitation by the government as a means to draw her son out of hiding served as a catalyst for his continued flight.

It is naive to assume that the United States government's attitude toward and treatment of the fugitive John Surratt were serendipitous, spontaneous, or disjointed. Its consequent behavior--reconstructed from the correspondence to and from Secretary of State William Seward--from the moment of John Surratt's discovery in Liverpool to the time of his arrest in Alexandria, forms a pattern far too overt to be treated as mere random instances of poor judgment as the 1867 House Judiciary Committee would later find. That committee's decision, based on its examination of State Department correspondence and on the testimony of the officials involved, stated simply that the State Department had not acted in an expeditious manner in its response to knowledge of John Surratt's whereabouts

and intentions. These findings, however, did not address the potential harm that John Surratt might initiate if arrested, extradited and tried. The Judiciary Committee's report contained no reference to possible motives for the State Department's actions.

Whether executive branch officials feared that John Surratt would implicate high-ranking American officials in the Lincoln conspiracy, that his testimony might seriously contradict the evidence presented by key witnesses from the 1865 trial of the conspirators--Louis Weichmann being chief among these witnesses--or that Surratt's very presence in court would refresh the collective American consciousness of the proceedings that had resulted in his mother's death, steps were indeed taken by Secretary of War Stanton and Secretary of State Seward to prolong John Surratt's fugitive status. Stanton's revocation of the reward for John Surratt's arrest after he became aware of Surratt's arrival in England takes on an entirely different aspect when the above motives are considered. So do Seward's inertia regarding the Antonelli extradition proposal and his tardy responses to overseas consuls requesting instructions for coping with the emerging Surratt situation take on the aspect of conscious obstruction. The conclusion of government ineptitude offered by the Judiciary Committee weakens and a government obstruction argument emerges when governmental self-preservation is factored into the equation. John Surratt's presence in America was viewed as a detriment to the well-being of the American government and he was consequently allowed to travel as he pleased.

The farce, however, had one final act. John Surratt's arrest and extradition

eventually became a begrudged reality due to the persistence of State Department consular officials who were unaware of these private agendas regarding Surratt. A corresponding attitude shift by the American government then occurred in response to his arrest. With the salutary neglect of John Surratt no longer an option, his conviction became the revised objective and a prosecution team was then assembled at least one member of which (Pierrepont) had connections with both Stanton and Seward. Only Surratt's conviction at their hands would uphold the 1865 military commission's verdict and, by extension, its very justification. Only a conviction, in addition and in particular, would insure that John Surratt's trial would not become a seance for his mother, summoning her for a retroactive albeit posthumous retrial and acquittal.

George Fisher, Stanton's associate who presided at the John Surratt trial, was, for the prosecution, an ideal arbiter of justice, if one may judge by their later aversion to re-trying Surratt during another judge's term. Fisher's performance, throughout the trial, punctuated by his denial of motions proposed by the defense, his condoning of the prosecution's constructive presence argument, and his attempt to cast the jury in his own image and likeness during his final charge to them, gave the appearance, collectively, of a prejudicial attitude against the defendant. When, following the hung jury, further attempts to indict John Surratt ran afoul of a statute of limitations, the United States government terminated their efforts to convict him.

The John Surratt case, with its multinational scope, provides insights into the evolving protocols of the State Department regarding the extradition process,

the ongoing Fenian problem, and Italian unification. Within its chronological setting, the case demonstrates the efforts of the United States government to contend with the conflicting agendas of Reconstruction and constitutional mandates. In its largest sense, however, the John Surratt case exemplifies the attitudes which governments adopt and the actions which they implement in order to preserve the status quo.

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APPENDIX I

DRAMATIS PERSONAE

ADAMS, Charles Francis	U.S. Ambassador to Great Britain
AIKEN, Frederick	Counsel for Mary Surratt at 1865 trial
ALLET, _____	Lt. Col., Commander of John Surratt's Zouave Battalion
ANTONELLI, Giacomo C.	Cardinal, Secretary of State, Papal States
AVERILL, William W.	Consul General, BNAP (7 December 1866)
BAKER, Lafayette C.	Chief of Washington detectives
BENJAMIN, Judah P.	Secretary of War, Confederate States of America
BRADLEY, Joseph H. Sr.	Chief Consul for John Surratt's defense
BRADLEY, Joseph H. Jr.	Consul for John Surratt's defense
BROPHY, John	Friend of the Surratt family, witness at Mary Surratt's trial
CARRINGTON, Edward C.	District Attorney at the trial of John Surratt
CHEW, Robert S.	Chief Clerk, State Department
CLAMPITT, John W.	Counsel for Mary Surratt at 1865 trial
CONOVER, Sanford	Witness and convicted perjurer at trial of conspirators
DAVIS, Henry Winter	Maryland Congressman
DAVIS, Jefferson	President, Confederate States of America
DOUGLASS, Samuel E.	Justice of the Peace for the City of Washington, DC
DUDLEY, Thomas H.	Consul General, Liverpool
DYE, Joseph M.	Witness at both 1865 trial and at John Surratt's trial
FISHER, George P.	Judge for the John Surratt trial
GOLDSBOROUGH, Louis M.	Admiral, United States Navy
GOODING, David S.	Marshal for the District of Columbia
HALE, Charles	United States Consul General, Alexandria
HISS, Hanson	Reporter, Washington Post

HOLAHAN, John T.	Boarder, Surratt boardinghouse, Washington, DC
HOLT, Joseph	Judge Advocate General, U.S.
HOOKER, J. C.	Acting Secretary of the Legation, Rome
HUNTER, William	2nd Assistant Secretary of State, United States of America
KANZLER, _____	General Minister of War, Papal States
KING, Rufus	United States Minister, Rome
LAMBILLY, _____	Captain of zouave detachment that arrested Surratt
LEE, Edwin G.	General, Confederate States of America
LEGH, R. C.	Acting Chief Secretary to the Government, Malta
LLOYD, John M.	Witness at 1865 trial and at John Surratt's trial
MARSH, George P.	United States Minister, Florence
MCMILLAN, L. J.	John Surratt's trans-Atlantic travelling companion, informant
MELLY, George	Justice of the Peace, Liverpool, England
MERRICK, R. T.	Counsel for John Surratt's defense
MILLIGAN, Lambdin K.	Plaintiff, <i>ex parte</i> Milligan case
PIERREPONT, Edwards	Associate Counsel for the Prosecution at John Surratt's trial
POTTER, John F.	Consul General, BNAP (11 Nov 1865)
RIDDLE, Albert Gallatin	Associate Counsel for the Prosecution at John Surratt's trial
ROUX, _____	Minister of War, Papal States
SEWARD, Frederick W.	Acting Secretary of State, United States of America
SEWARD, William H.	Secretary of State, United States of America
SPEED, James	Attorney General of the United States
STANTON, Edwin M.	Secretary of War, United States of America
STE. MARIE, Henri B. de	Zouave, American acquaintance of John Surratt, informant
SWAN, Frank	United States Consul, Naples
TOWNSHEND, Edward D.	Assistant Adjutant General
VENOSTA-VISCONTI, Emilio	Minister of Foreign Affairs, Italy

WEICHMANN, Louis	Witness at both 1865 trial and John Surratt's trial
WELLES, Gideon	Secretary of the Navy, United States
WILDING, Henry	Vice Consul, Liverpool
WILSON, Nathaniel	Assistant District Attorney, member of prosecution team
WINTRHOP, William	United States Consul, Malta

VITA

Thomas M. Martin
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PERSONAL

Born February 26, 1950, in Pittsburgh, Pennsylvania.
Married, no children.

EDUCATION

B.A., Wake Forest University, 1972
Major: History. Education Block Courses, 1973.

TEACHING POSITIONS

1985 - 1996: Teacher, Norfolk Public Schools
1994 - 1996: Social Studies Department, Chair
1983 - 1984: Teacher, The Williams School, Norfolk, Virginia
1976 - 1982: Teacher, Winston-Salem/Forsyth County Schools

RECOGNITION

1993: Inclusion in Who's Who Among America's Teachers
1988: Teacher-of-the-Year (schoolwide)
1978: Teacher-of-the-Year finalist (schoolwide)

PROFESSIONAL ACTIVITIES

Presenter:

"The Use of Editorial Cartoons in the Classroom."

"Implementing a First-Person, Role-Assumption Journal."

"Designing Long-Term Simulations for the American History Class."

"Creating Your Own Audio-Visual Presentations."

Participant: Curriculum Development Committees

PROFESSIONAL/OTHER ASSOCIATIONS

National Association for Teachers of History

Phi Alpha Theta

Portsmouth Area Civil War Round Table

Ninth Virginia Volunteer Infantry (a Civil War re-enactment group)